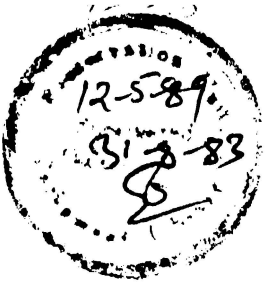
Tuesday, 29th May, 1951



PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

Third Session

of the

PARLIAMENT OF INDIA

1950-51

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THE

PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers.)

OFFICIAL REPORT

PARLIAMENT OF INDIA

Tuesday, 29th May, 1951

The House met at Half Past Nine of the Clock.

[MR. SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

(No Questions: Part I not published)

CONSTITUTION (FIRST AMENDMENT) BILL.

Shri Kamath (Madhya Pradesh): On a point of order, Sir. The House is well aware that the Constitution (First Amendment) Bill was referred to a Select Committee on the 18th of this month and came back to the House on the 25th. A careful perusal of the report of the Committee, particularly of the minutes of dissent, shows that to a certain extent the proceedings of the Committee have been vitiated in several respects and .....

Mr. Speaker: Order, order. I do not want to decide on that point now. Let the motion first come before the House, that the report of the Select Committee be taken into consideration, and let the discussion proceed, and then, of course, if necessary, the hon. Member may point out to me in what respects the proceedings were defective and I shall then consider the matter.

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): I beg to move:

> "That the Bill to amend the Constitution of India, as reported by the Select Committee, be taken into consideration."

The Select Committee considered this matter for six days, and yet perhaps to say that it considered it for six days does not exactly convey the right impression, because the amount of time and thought that it gave to it probably represented much more than six days. The Committee consisted of many hon. Members of this House holding a variety of opinions and pressing them, quite rightly, with all the force at their command. And it was our wish and attempt in this Committee to come, as far as we could, to a large measure of common understanding because it was a serious matter—and an amendment of the Constitution is always a serious matter—and we tried to find common ground. And may I say, that in effect, we did find a great measure of common ground, and even though there are a number of minutes of dissent attached to this report, I think that the common ground we found in the course of our deliberations was far greater than might be expected by an unwary reader of these minutes of dissent. Nevertheless there is no doubt that there was and is a measure of dissent, and I do not deny that. But I think perhaps the emphasis or stress laid on the dissent in those minutes of dissent is greater or appears to be greater than actually existed in the deliberations of the Committee. I am merely trying to point out that we did approach this question, not in a partisan spirit, but in a spirit of trying to understand, of trying to weigh and balance the opinions of our critics and trying to find a way out which would, as far as possible, be satisfactory to them as well as to others. And I think, on the whole, we succeeded. Therefore, the report that I presented to the House is, I believe, an improvement on the original Bill that I placed before the House. I cannot say, of course, that what I put before the House is perfect in all respects, because there is no perfection in such matters. Opinions may differ and where there is an attempt to find a middle way, often there is a certain dissatisfaction on either side. But I think that the report does represent a very hard and very continuous attempt to find as good

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language as we could possibly do, to give expression to our intentions, without doing violence to any part or any intention of the Constitution. Indeed, as I said at an earlier stage, the amendments we sought to put in, however worded, were really meant more to amplify and clarify than to make a change in any part of the Constitution. But naturally any amplification and clarification involves some change in the interpretation, some change in effect. That is true. But keeping before us all the time the spirit which animates the Constitution and those who made it, we felt that we were not going beyond it, but rather attempting to clarify it.

In the minutes of dissent stress is laid on the fact that this Constitution has only been in existence for sixteen months, and it is too short a period for us to try to amend it or to improve upon it. Now, I would not venture to criticise that statement. And yet I think that to lay stress on sixteen months in this connection has little bearing on the subject, as if after sixteen years we will be in a better position to judge. No doubt we would be, if we are there. In the long run it may be so, but it has often been said to those who talk about long-run that we shall all be dead anyhow by then. Now, the question is not whether the Constitution has been in existence for months or for years, but rather what is necessary to be done, because of the experience we have had. Because of the conditions that face us, if something is necessary, then it does not matter whether it is sixteen months or sixteen weeks, if you like, but if it is necessary then the time factor does not count at all. Therefore, the whole basis should be whether such a change is necessary or not.

Now, a fair number of amendments have been suggested and as the House knows, many of them are rather of a technical or formal nature, being attempts to get over some slight difficulty that had arisen, without any interference with any basic provisions of the Constitution. There are in fact, two or three, if you like, matters that are considered more important and more basic—those relating specially to articles 19, 31 and 15. I do not want to take the time of the House at this stage in referring to the other articles in the report, because there is little dissent in regard to them, although one hon. Member of the Select Committee has objected to the phraseology of one or two. But the meaning behind them is accepted and if it is necessary to change the phraseology by a word here or a word there in order to bring out the meaning more clearly, surely we shall have no objection. We have tried to give it the best wording we could think of.

Now I come to deal with those three specific articles to which a great deal of argument has been attached. There is article 15 (2) or 15 (4) as it is proposed to make it, that is to say, the clause which says that nothing in article 15 (2) or in article 29(2) should come in the way of our making special provisions for certain groups or classes etc. which are not defined exactly, but indicated there. I wonder if the House remembers that when I referred to this during the earlier stages of this Bill I mentioned that by an oversight the Bill as printed then had left out a small but rather important matter, that is, in clause relating to article 15 we had said at that time in the printed Bill that nothing in article 15(2) will come in the way etc. What we had intended saying—in fact what we had decided to say was that "nothing in article 15 or in article 29(2)" but unfortunately owing to a slight error, the words "article 29(2)" were left out. I mention this clearly merely to indicate that this was not an afterthought on our part. It was an error for which I take full share. It was not an afterthought to include article 29(2) because we had decided about it previous to putting it in the Bill. There were two views in regard to article 29(2). It was the view of many eminent people that article 29(2) in this particular context does not affect the matter at all. It does not come in the way at all, and yet, in another context article 29(2) had been referred and because of the certain doubt in people's minds that although the best opinion was that it does not come in the way, nevertheless, there was a hesitation or doubt and we thought that that doubt should be removed.

Without going into the details of this article or of the amendment proposed, I wish to say a few words about—shall I say—our basic ideas on this subject. Why have we done this and why has it been thought that these articles come in the way of doing something that we wish to do? The House knows very well and there is no need for trying to hush it up, that this particular matter in this particular shape arose because of certain happenings in Madras. Because the Government of the State of Madras issued a G. O. —I do not know the details of it— by making certain reservations etc. for certain classes or certain communities—rather for all communities—and the High Court of Madras said that this G. O. was not in order, was against

the spirit or letter of the Constitution etc. I do not for an instant challenge the right of the High Court of Madras to pass that order. Indeed from a certain point of view it seems to me, if I may say so with all respect, that their argument was quite sound and valid. That is to say, if communities as such are brought into the picture, it does go against certain explicit or implied provisions of the Constitution. Nevertheless, while that is quite valid and we bow to the decision of the High Court of Madras in that matter, the fact remains that we have to deal with the situation where for a variety of causes for which the present generation is not to blame, the past has the responsibility, there are groups, classes, individuals, communities, if you like, who are backward. They are backward in many ways—economically, socially, educationally—sometimes they are not backward in one of these respects and yet backward in another. The fact is therefore that if we wish to encourage them in regard to these matters, we have to do something special for them. We come up against this difficulty that we talk on the one hand in our Directive Principles of Policy of removing inequalities, in raising people up in every way—socially, educationally, economically, reducing the distances which separate groups or classes of individuals from each other, we cannot separate them entirely, we cannot make a fool a wise-man or make a wise-man a fool, individuals are clever or not clever, individuals are tall or short, thin or fat and nobody tries to have similar rotundity either in the mind or body but we do wish to give the same opportunities to everyone so that he can take full advantage of those opportunities and grow to the full stature as far as that stature allows it and if anything comes in the way of achieving this, we should remove that. It is not an easy matter, it is not a thing to be done quickly and suddenly when we have a vast population.

Yet, again, there is one Member who has pointed out in his minute of dissent that when we talk of people or groups as backward, whom are we thinking of. Because 80 per cent.—I do not know what percentage it is—are backward in all these respects. That is perfectly true and yet we have to tackle the problem. It is no good saying that because 80 per cent. are backward, so we must accept the position. We have to give them opportunities—economic opportunities, educational opportunities and the like. Now in doing that we have been told that we come up against some provisions in the Constitution which rather lay down some principles of equality or some principles of non-discrimination etc. So we arrive at a peculiar tangle. We cannot have equality because in trying to attain equality we come up against some principles of equality. That is a very peculiar position. We cannot have equality because we cannot have non-discrimination because if you think in terms of giving a lift up to those who are down, you are somehow affecting the present *status quo* undoubtedly. Therefore you are said to be discriminating because you are affecting the present *status quo*. Therefore if this argument is correct, then we cannot make any major change in that respect because every change means a change in the *status quo*, whether economic or in any sphere of public or private activity. Whatever law you may make, you have to make some change somewhere. Therefore we have to come to grips with this subject in some other way.

Take another very important approach of ours, that is, in our attempt gradually or rapidly to realize an egalitarian society or some society where these differences are not great, apart from national or physical differences etc., in our attempt to do that, we want to put an end to or try to put an end to all those infinite divisions that have grown up in our social life or in our social structure—we may call them by any name you like, the caste system or religious divisions etc. There are of course economic divisions but we realize them and we try to deal with them not always very satisfactorily. But in the structure that has grown up—quite apart from the religious point of view or the philosophical aspect of it—this is the structure of society with its vast numbers of fissures or divisions etc. Now, to get rid of that in order to build, not only to give opportunity to each individual in India to grow but also to build up a united nation where each individual does not think so much of his particular group or caste but thinks of the larger community—that is one of our objectives. On the other hand while that may be our objective, the fact remains that there are these large numbers of divisions and fissures in our social life, though I think they are growing less. We are gradually obliterating all those hard and fast laws that divide them but nevertheless the process is slow and we cannot ignore the present. We cannot ignore existing facts. Therefore one has to keep a balance between the existing fact as we find it and the objective and ideal that we aim at. If we stick to the existing fact alone, then we are static and unchanging and we give up all the ob-

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jectives we have or the Directive Principles of Policy that are laid down in the Constitution. That of course we cannot do, and must not do. On the other hand if we talk only about those Directive Principles etc. ignoring existing facts, then we may talk logic and we may talk fine sense even in a way but it has no relation to facts and it becomes artificial, it becomes slightly adventurish and therefore not realistic enough.

So we have to find a middle way, that is keeping with the objective or the ideal in view, taking steps which gradually carry us in that direction and yet not ignoring the existing facts with which we have to deal. We have to deal with them anyhow, even if you have to deal with it in the sense of fighting against the existing situation.

These were the difficulties and the House will understand that in grappling with this problem one can lay emphasis on this aspect or that aspect of it, because both aspects are important and the real difficulty comes in finding a balance between the two. It is very easy to say to any Member that it is a simple problem which requires an aye or nay. This is good or that is bad. But normally the problems we have to face cannot be answered easily by ayes and nays. We have to consider them in the total context of things. We have to consider them in their relation to a hundred other things and thereby bring the ideal into some relation to the actual. These were the matters at the back of our minds as we discussed this matter from hour to hour in the Select Committee.

I think I may say with perfect truth that every single Member of the Select Committee recognised the desirability of giving these opportunities for growth to those who in any sense may be considered backward. There was no doubt in any Member's mind but what some Members were afraid of in doing so was, might not this be abused, might this be utilised for the accentuation of the very class or communal divisions which have done us so much injury and which we have been trying to get rid of. This fact troubled and rightly troubled their minds as it must trouble the House and each one of us. So we tried to find a middle way and I submit that the wording we have adopted in this article is more or less a successful way of meeting this difficulty and finding the middle way.

You must have read an earlier paragraph in the report which says:

> "Some apprehensions have been expressed in respect to this amendment. The Select Committee is of the view that this provision is not likely to be, and cannot indeed be, misused by any Government for perpetuating any class discrimination against the spirit of the Constitution, or for treating non-backward classes as backward for the purpose of conferring privileges on them."

We have said so and we earnestly hope that if and when this provision is passed it will not be misused. Nobody can guarantee against misuse or some kind of special or undesirable use by any authority of any provision you may make. We can only try our best to create the conditions where this would not be so. What I wish to assure this House about is this, that we are alive to the possibility of this kind of thing being used for a particular purpose to which we are opposed. And may I say also that when we talked with certain persons, including the Chief Minister of the Madras Government, they also told us that they realised our difficulty, they appreciated it and they had no desire to function exactly in that way which people feared. So I would commend this particular amendment of article 15 to the House.

Then I come to article 19(2), which perhaps has given rise to more comment and controversy than any other suggested amendment. Here may I deal with one matter, because I think two or more hon. Members of the Select Committee have protested and raised objections to the fact that they were not supplied with the list of the laws that might be affected by these changes. There are those laws of course, most of them finding a place in the proposed Ninth Schedule. They are there and they are available to anybody, every one of them and I may inform the House.....

Dr. S. P. Mookerjee (West Bengal): That is not under article 19(2) but under article 31B.

Shri Jawaharlal Nehru: You are perfectly right. Perhaps I have got mixed up between the two. But I shall finish this matter. Those were considered carefully by our Law Department. In regard to the other laws I have not quite understood the complaint or, if I may say so, having understood it partly, I have not been quite able to see what I can do about it. It is exceedingly difficult to make a list of all kinds of laws which might

be affected. Some I can say straight off. For instance, you can say straight off what effect it will have on a particular law or part of it. I can say that because of a particular judgment of the Supreme Court or the High Court. That is a specific thing. Even there I do not know exactly what the position might be. It is not as if we are suddenly resuscitating or rejuvenating certain laws which had become obsolete, disabled or blocked. It is because of a certain interpretation put by some of our superior courts on a certain fact and we wish by this amendment to change that interpretation. What effect that interpretation will have on any particular law again is to be decided by the superior courts of the land and not by us. I might perhaps give you or perhaps the Law Department might give you an indication of their opinion as eminent lawyers. This might or might not be so. Ultimately it can only be decided by the courts of the land as to what effect this particular amendment when passed has on a particular law. My view will not be a precise and definite opinion but rather an opinion which with my limited knowledge of the law I might give. With regard to some matters I might be more precise and in regard to others I would be vague, because it is not making law out of nothing but making it valid by removing certain obstructions that have come, certain interpretations that had been given which might apply to a part or the whole of the law, as the case may be or might not apply at all to it.

I speak with great respect when I have to deal with the law, because I have not only great respect for the judges but great fear of the lawyers. Take for instance section 153A of the Indian Penal Code which deals with what might be called communal discord or the preaching of enmity between communities. I have no doubt that the amendment we are seeking to put in brings back into operation —the exact words might be different —how it should be worked. That is if there is going to be preaching of communal hatred, certainly if this is passed, that can be dealt with.

Take again section 124A of the Indian Penal Code. Now so far as I am concerned that particular section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better. We might deal with that matter in other ways, in more limited ways, as every other country does but that particular thing as it is should have no place, because all of us have had enough experience of it in a variety of ways and apart from the logic of the situation, our urges are against it. I do not think myself that these changes that we bring about validate the thing to any large extent. I do not think so, because the whole thing has to be interpreted by a court of law in the fuller context, not only of this thing but other things as well. Suppose you pass an amendment of the Constitution to a particular article, surely that particular article does not put an end to the rest of the Constitution, the spirit, the language, the objective and the rest? It only clarifies an issue in regard to that particular article.

10 A.M.

Therefore, when you consider these amendments and when you pass them into law, all I can say is that the effect of certain judgments will, if this amendment is passed, be removed; the article will be interpreted in a slightly different way but always in terms of the whole Constitution. And therefore it becomes difficult for me to place before the House a list of laws and say, "This has happened to them", because it is a question of judgment of each individual. Some might say, "Yes, this has been affected by this particular judgment and this is the effect which we wish to produce." Now these laws—two, three or four—are well-known to the House and to every person who takes an interest in them. For the rest, I just do not know. That was my difficulty.

In so far as this question of reviving laws etc. is concerned, it is a question of removing a certain obstruction that had come so that, first of all, we can deal with the situation without that obstruction; secondly, that we can consider the whole matter afresh and put an end to those old laws which are objectionable, and bring something new. The situation became a little difficult for us even to have any new legislation in this matter. The House will remember that there was a Committee known as the Press Laws Enquiry Committee. This Committee made certain recommendations, and it was stated by some Members here and many people outside that these recommendations had been rejected in toto by the Government or by the Home Minister. The fact of the matter was that these recommendations, many of them, were completely pointless if the interpretation of certain courts was correct, as we were bound to accept them to be. Either we could not accept those interpre-

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tations—then the question did not arise in that particular way—or we had to proceed in some different way. Supposing you pass this amendment, then their recommendations are something that can be considered as capable of being effective, if you approve of them. Personally, so far as their recommendations are concerned, in some matters they go rather far, or rather, if I may say so, they do not go far enough. But that is a matter of judgment. The point is the whole issue became a little difficult for us to deal with because of these certain interpretations.

Now as I stated previously, when we brought forward these amendments, any desire to curb or restrain the freedom of the Press, generally speaking, was exceedingly far from our minds. That, of course, is no excuse, or no reason, if in effect the words do that—I realise that—and it is folly for any Government to say, "We did not think of this", when a certain consequence inevitably flowed from that action. That is perfectly true. Nevertheless, there is something in it when I repeat that any desire to curb the freedom of the Press was not before us. We are dealing with a particular situation, I think a difficult situation, a situation which grows more difficult, for a variety of reasons, national and international. And it was not in terms of curbing the Press but it was rather in wider terms that we thought of this problem. Because we were all the time considering the question of the Press rather independently, we wanted to deal with it independently, to put an end to some old laws and bring something more in conformity with modern practice, in consultation with those people who are concerned with this matter. However, it is perfectly true that whether we thought of it or not, this affects the situation to some extent. It affects it in two ways: one, directly, that is to say a certain thing has been done which may put an obstruction in the way of the Press in theory, and, secondly, it may give a chance to a Government to impose some disabilities, that is, the Government may have the legal power to impose some disabilities unless some change is made. Both are possibilities, I recognise that. So far as we are concerned we do not wish, and we do not wish any State Government, to take unfair advantage or any advantage of this change to curb the freedom of the Press, generally speaking, and we wish to review the whole scheme as soon as possible. But I would beg of you to consider this matter in theory as well as, of course, in practice.

Great exception has been taken to some additional phrases in the proposed article 19(2). First of all, may I draw your attention to a major change; although the change is of one word only, it is a major change. That is the introduction of the word "reasonable" which makes anything done patently justiciable, although, as a matter of fact, even if that word "reasonable" was not there every part of the Constitution, within some limitations, is always justiciable. It just did not matter if this word "reasonable" was there or not—the matter could have gone to a court of law and could have been interpreted by our superior courts. There is no doubt about that. It is true that their interpretation would have been limited by the new thing that we have said. That is true, of course, because in interpreting the Constitution they will have to consider the new part of the Constitution that has come in. Nevertheless, the interpretation would have been given taking the Constitution as a whole—the spirit of it, the wording of it, the precise language of it, and so on and so forth. Nothing can take away their power to consider any part of the Constitution and to give their opinion. You can, by constitutional amendments, direct your attention one way, that the Constitution means this more than the other, and naturally they would interpret it a little that way. But then, whether the word "reasonable" is there or not, surely it is open to a court, if some fantastic thing was done, to say it is fantastic. Suppose the word "reasonable" was absent from all those various clauses of article 19 as it does occur in various clauses, it does not mean that the idea of "reasonable" was absent. It is there although the word may be absent. However, I shall not go into that technical argument. My point is that whatever the power the court might have had if the word "reasonable" had not been there, certainly the introduction of the word "reasonable" gives it the direct authority to consider this matter.

Now why did we not put that word "reasonable" at an early stage? Then we wished to avoid not so much the courts coming into the picture to give their interpretation; not that, but we wished to avoid an excess of litigation about every matter, everything being held up and hundreds, and may be thousands, of references constantly made by odd individuals or odd groups, thereby holding up not only the working of the State but producing a mental confusion in people's minds at a time when such confusion might do grave injury to the State.

Shri Kamath: It is a matter of Fundamental Rights.

Shri Jawaharlal Nehru: I am glad my hon. friend interfered. He said that it is a matter of Fundamental Rights. Does he mean that a matter of Fundamental Rights ought to be allowed to lead not only to confusion but to grave danger to the State? Surely not. I say nothing, not a single Fundamental Right can survive grave danger to the State. *(Hear, hear).* And I wish the House would be clear about this and realise the times we live in, in this country and in other countries, and not to quote so much some ancient script or ancient thing that was said at the time of the French Revolution or the American Revolution. Many things have happened since then. It is an odd thing that some of my hon. friends—not many—have taken umbrage at this amendment in the Constitution and hold up to us that the Constitution is something sacred. Some of them or their colleagues outside this House have openly stated that the first thing they would do if they come to power is to scrap this Constitution and put an end to it. That is a curious position to adopt—that this Constitution has to be scrapped just as this Parliament has to be scrapped and something new has to come in its place. Here, what we want to do is not to change it, but to amend it slightly. But that is the position only of very few Members of this House.

Some hon. Members who have written their minutes of dissent have referred to the sacred and sacrosanct character of this Constitution. A Constitution must be respected if there is to be any stability in the land. A Constitution must not be made the plaything of some fickle thought or fickle fortune,—that is true. At the same time we have in India a strange habit of making gods of various things, adding them to our innumerable pantheon and having given them our theoretical worship doing exactly the reverse. If we want to kill a thing in this country we defy it. That is the habit of this country largely.

So, if you wish to kill this Constitution make it sacred and sacrosanct —certainly. But if you want it to be a dead thing, not a growing thing, a static, unwieldy, unchanging thing, then by all means do so, realising that that is the best way of stabbing it in the front and in the back. Because, whatever the ideas of the 18th century philosophers, or the philosophers of the early 19th century and many of those ideas may be very good, nevertheless the world has changed within a hundred years—changed mightily. The world has changed in the course of your generation and mine tremendously and we have seen great wars and great revolutions. We have seen the most perfect of Constitutions upset, not because they lacked perfection, but because they lacked reality, because they lacked dealing with the real problems of the day. Do you know of any better framed, or better phrased Constitution than the Constitution of the Weimar Republic—the German Constitution? It was perfect in wording, phraseology, balance and adjustment. Yet that whole Constitution went lock, stock and barrel. Away it vanished into the dustbin of history.

Do you know of a better Constitution than the Constitution of the Republic of Spain which unhappily was killed, assassinated about eleven or twelve years ago? It was a magnificent constitution. It went so far as to say that it would not go to war with any country or make treaty with any foreign country unless the League of Nations of the day permitted it to do so, or agreed to its doing so. It was a Constitution of fine idealists. Yet these fine idealists are spread over the various corners of the world and that Constitution has no place in Spain.

I have given you two instances; I could give you any number of them from every country of Europe and many countries of Asia. So that, do not imagine that because we have passed a Constitution and because we call it sacred and sacrosanct, we have necessarily given it that stability. Do not also imagine that anything that is considered by you stable is necessarily so. If it is true that a country and a community grow—they are not static—then surely conditions come which should be dealt with in a different way, not in the old way.

Do you wish India to continue as it is? Surely not. You want industrial growth, you want social equality, you want all kinds of things to happen here. You have yourself laid them down in the Directive Principles of Policy. And as I said on the last occasion the real difficulty we have to face is a conflict between the dynamic ideas contained in the Directive Principles of Policy and the static position of certain things that are called 'fundamental', whether they relate to property or whether they relate to something else. Both are important undoubtedly. How are you to get over them? A Constitution which

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is unchanging and static, it does not matter how good it is, how perfect it is, is a Constitution that has past its use. It is in its old age already and gradually approaching its death. A Constitution to be living must be growing; must be adaptable; must be flexible; must be changeable. And if there is one thing which the history of political developments has pointed out, I say with great force, it is this that the great strength of the British nation and the British people has laid in their flexible Constitution. They have known how to adapt themselves to changes, to the biggest changes, constitutionally. Sometimes they went through the process of fire and revolution. Even so, they tried to adapt their Constitution and went on with it.

Shri Kamath: They have no written Constitution.

Shri Jawaharlal Nehru: The hon. Member reminds me of a fact that had not escaped my notice that they have no written Constitution. We in this country could not obviously adopt the British way of an unwritten Constitution. We cannot have that especially in a big country with numerous autonomous Provinces and States. Nevertheless the other extreme of a rigid Constitution is a dangerous one, which might lead to the breaking up of that Constitution when it walks away—if you like—at a tangent from reality. Because life is a curve—it is not a straight line—and the life of a nation is even more of a curve, and the life of a nation in the present day of changing humanity is very very curvy. Logical and straight lines are tangents which go off the curve and if the tangent goes too far away from that curve of life and curve of growth of a nation, then there is conflict, an upheaval and after that upheaval, well, something new emerges. You come back, as you are forced to come back, to the line of life because you cannot depart too far from it. So if you are flexible in your action and Constitution, then you keep near that curving growth of the nation's life.

We live in a haunted age. I do not know how many hon. Members have that sense and that feeling—we in this country or in the world—of ghosts and apparitions surrounding us, ideas, passions, hatred, violence, preparations for war, many things which you cannot grip, nevertheless which are more dangerous than other things. We live in this haunted age where vast numbers of people in various countries become frustrated because they see no light, because they see danger, the danger of a future war and the danger of a future break-up, before them. Hon. Members tell me that this Constitution has been in existence for sixteen months. Can any Member tell me what the fate of the world will be in another sixteen months? I cannot.

Shri Kamath: Nobody can.

Shri Jawaharlal Nehru: Nobody can, except this that it will be very different from what it is today. And that is a big thing to say. In regard to this country too I venture to say that another sixteen months' time will see many changes, and big changes, in this country. Whether they are for the good or for the bad, I do not know. But it will see many changes. As Mr. Gokhale said, how can you enchain the growth of a country? Do you think by some form of words and phrases and calling them a fixed concept it must prevent the growth of a country? So you have to balance. You have to balance between that fickleness of approach which takes these matters light-heartedly—that is dangerous, of course; these are serious matters; we cannot treat them in that fashion—and on the other hand not to lose yourself in rigidity of thought, in unreceptiveness of happenings all around.

These amendments that we have placed before you are an attempt to balance between that stability of approach and at the same time that flexibility, an attempt to balance between the idealism and the realism, between the conditions in the country as we see them today and the possible dangers that may confront us, and at the same time to keep the whole, entire spirit of the Constitution, the spirit which ensures us freedom, freedom of the Press and various other freedoms.

Some people have thought that the whole object of these amendments somehow is connected with these elections that are coming. I confess that when I first heard that—it might have been a legitimate inference in those persons' minds—but it came as a great surprise to me, because the idea had not struck me at all. In fact, may I confess it that I do not get excited about these elections at all, either way, any way. I have never been excited about elections, and these elections, which are going to be colossal and very big, are not likely to excite me. But if the House or the country disbelieves our bona fides, then no word of mine of course is helpful. But I can assure the House that none of us, to my knowledge, has the least notion

that this had anything to do with the elections as such.

I can tell you one thing, that the fact of elections coming may previously create a situation in the country, a situation dangerous from the point of view of security. Certainly. And if I or anybody who is in a responsible position in the country, responsible for the security of the country, does not think, that he can deal with it in a particular way, then it is his duty to come to this House and tell it "We want this particular power to deal with the situation". I am in a responsible position. It is not merely a question of what words you put in the Constitution or not: it is a question of dealing with the situation in the country, of saving the country from going to pieces, as some people want and try to make it. So far as I am concerned, and I am sure so far as the House is concerned, we shall fight to the uttermost all these elements.

Are we going to fight it with these words, to be told that this word comes in the way and that word prevents you from doing this? No word will be allowed to come in the way because the country demands it. How many of you remember, or have you forgotten, three and a half years ago, in this city of Delhi in the month of September 1947, in Punjab, in that entire body of Western Pakistan, what had happened? This Constitution was not there. But I am not thinking of the Constitution. Where was freedom anywhere—not constitutional freedom but the freedom of normal human impulses—where were those freedoms? Do you think any Constitution will prevent me from dealing with such a situation? No. Otherwise the whole Constitution goes, and the country goes. And I want to be perfectly fair to this House and to the country in declaring that, if I am responsible and the Government is responsible, anything that goes towards disrupting the community, anything that goes towards creating communal discord in this country will be met with the heavy hand of this Government. There has been enough of loose talk about this. It is for this country and for this House to have or not to have this Government. But these are the terms of the Government, no other terms.

Now, the Press has said a great deal about the liberty of the Press. I know something of the Press, and I have been connected with the Press too somewhat, and I can understand their apprehensions. Yet I say that what they have said is entirely unfair to this Government. And I say that the Press, if it wants that freedom—which it ought to have—must also have some balance of mind which it seldom possesses. They cannot have it both ways—no balance and freedom.

Every freedom in this world is limited, limited not by law so much, limited by circumstances. We do not wish to come in their way. Personally I am convinced, as I have said previously, and as I believe a pamphlet has been circulated which contains the speech of mine delivered some time back—I am glad that it has been circulated, because I repeat I stand by every word of what I have said about the freedom of the Press—and I hope that in so far as I can I shall be able to help in maintaining that freedom. That is so. But I care a little more for the freedom of India, and I am not going to allow anything coming in the way of the freedom and unity of India, whatever it may be. I do not mean to say that the freedom of the Press comes in the way of the freedom of India. Not that. But we have to look at things in the proper perspective and not lose ourselves as if we are in a court of law, arguing this case or that case. We are legislators sitting in Parliament with the fate of this nation in our hands, possibly also affecting to some extent the fate of other nations. It is a difficult and highly responsible position, and we cannot be moved away by passion or prejudice or by some logical chain of thought which has no relation to reality.

Therefore we have to consider these matters in all seriousness, remembering always that certain freedoms have to be preserved. It is dangerous even in the flush of excitement to weaken them, I admit. We must not weaken them. At the same time, while we want freedom, freedom of the Press or freedom of speech or freedom of anything—they may be good—we have to remember that the nation must be free, the individual must be free and the country must be free. If national freedom is imperilled or individual freedom is imperilled, what good do other freedoms do? Because the basis of freedom is gone. So all these have to be balanced. Maybe the balance we suggest is not a correct balance. Let us look at it. But it is no good saying vaguely that this freedom has been attacked and weakened.

The House will remember—a fact that has been repeatedly stated—that this amendment is an enabling one, it is not a law. If there was a law before the House it should be consi-

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dered very carefully, each word. Naturally when you give an enabling power, it is given in slightly wider terms. Suppose I say "friendly relations with foreign Governments", it is a friendly way of putting it; it is a nice way of putting it, both from the literary point of view and from the international or national point of view. Exactly what would amount to a danger to friendly relations is so difficult to state; you cannot specify. You may, of course, put down one thing or the other. You may say "defamatory attacks" as we sought to say at one time "defamatory attacks on the heads of foreign nations or others" but in effect if once you have a check to see that it is not done unreasonably, it is best you use gentle language. During three years or so, and long before the courts gave this clause this interpretation, I am not aware it may be I am wrong—of any action being taken anywhere in regard to criticism of foreign countries or foreign policy. So far as I am concerned and so long as I have anything to do with it, I can assure you that you can criticise to your heart's limit and extent the foreign policy that my Government pursues or the policy of any country; to the utmost limit you can go. I cannot dislike your criticism; nobody will be allowed to come in their way. But suppose you do something which seems to us to incite to war, do you think we ought to remain quiet and await the war to come? And if it is so, I am sure no country would do that. We cannot imperil the safety of the whole nation in the name of some fancied freedom which puts an end to all freedom. Therefore, it is not a question of stopping the freedom of criticism of any country and naturally we should like not to indulge in what might be called defamatory attacks against leading foreign personalities. That is never good, but in regard to any policy you can criticise it to the utmost limit that you like, either our policy or any country's policy, but always thinking in terms of this, that we are living in a very delicate state of affairs in this world, when words, whether oral or written count; they make a difference for the good or for the bad. A bad word said out of place may create a grave situation, as it often does. In fact, it would be a good thing, I think, if many statesmen, most of them are all dealing with foreign affairs, became quiet for a few months; it would be a still better thing if newspapers became quiet for a few months. It would be best of all if all were quiet for a few months. However, these are pious aspirations which I fear will not be accepted or acted up to but we live in dangerous times and I wish the House to consider them in dealing with this article 19(2). In the Select Committee we examined it in a variety of ways. You will remember that the word 'reasonable' was not there at first. We tried to redraft it completely, more on the lines of the present shape of words in article 19(2) of the Constitution. In the present form of words, there is no mention of 'restrictions'. So we thought that we had better proceed on that line and then we tried naturally to limit the various subjects mentioned there, for instance,—I should be quite frank with you—in regard to friendly relations with foreign powers, we sought to put in the words 'defamatory attacks on heads of foreign States' plus such other attacks which might impair the friendly relations with foreign States. Now that is obviously limited and that is all that one wants and so on we went on limiting the other subjects. We produced a new draft at that time. Then we looked at it and we found that while some people liked this part of the draft better, the other people liked that, but nobody seemed to like the whole thing as it was and so we thought: Let us go back to our old draft but with a very major change, that is, the addition of the word 'reasonable' which really, immediately and explicitly limits everything that you do and puts it for the courts to determine whether it is reasonable or not. It is a big addition. As I said, it is not the courts we are afraid of. There are courts of eminent judges, but what really frightens me a little is the tremendous volume and bulk of litigation that all this kind of thing encourages and thereby bringing in complete uncertainty in everything.

There is one thing else. My colleague Shrimati Durgabai has put in a note in which she has argued that these changes should be made by Parliament and not by the States. I am 100 per cent. in sympathy with her desire. My sympathies are there but my mind is not quite clear about the legal aspects of this. I think it would be a very good thing if Parliament alone can go into these matters, but I am assured by some lawyers that there are difficulties in the way (*An Hon. Member*: No difficulty). Then again another Member of the Select Committee has suggested that the President may certify any such Bills connected with these matters passed by the State Legislatures. That is a matter which we may consider. These are not matters of basic principles because, we do want two things: A certain power to deal with a certain critical situation if and when it arises and we do want checks to see that

that power may not be misused. We want both these things. It is impossible to do these things perfectly; you have to find some middle way and trust to luck that the people who exercise that power will be sensible, reasonable and wise. As a matter of fact, Governments, whether Central or State Governments today have naturally a great deal of power. If they misuse it they can do a lot of mischief in a hundred and other ways. Ultimately the check consists in that Government falling out. The only check is that we have to choose the right persons who are likely to behave in a reasonable and wise way.

I need not draw your attention to the fact that not only the word 'reasonable' has gone in in article 19 but two or three lines of words have gone in, which I think improve the article greatly and make it more concise and bring the whole scope of the article under the word 'reasonable'.

Then I come to article 31. Here some minor changes have been made. I need not go far into it but there is one thing which I should like to say particularly. Some hon. Members, I believe, have given notice of amendments to add other laws to the Ninth Schedule. I would beg of them not to press this matter. It is not with any great satisfaction or pleasure that we have produced this long Schedule. We do not wish to add to it for two reasons. One is that the Schedule consists of a particular type of legislation, generally speaking, and another type should not come in. Secondly, every single measure included in this Schedule was carefully considered by our President and certified by him, every one, except the last one, I think, and that last one was independently examined by us quite a great deal. So that, it has gone through a process of examination, analysis and scrutiny and we can take a certain responsibility about it. If you go on adding at the last moment, it is not fair, I think, or just to this Parliament or to the country.

This article 31 refers chiefly and principally to the abolition of the zamindari system and the like, which has been a basic programme of the country for a long time. I am not speaking at the moment from any partisan or party point of view, although that is important enough in the sense that if we are pledged to something we should give effect to it, but rather from larger considerations. I would beg the House to consider that the basic problem today in Asia is the agrarian problem. If we delay in giving effect to it, as we have delayed, we will get entangled in all manner of difficulties out of which we might not be able to extricate ourselves, quite apart from its intimate relationship with the food problem.

I should like to say that in this matter there has been a fair amount of litigation. In fact, it is due to that litigation that some of these difficulties have arisen. I cannot blame the people for going to law courts to get such protection as they think they could get. I am not blaming the zamindars for doing so. They have every right to do so and profit by it. But, I would like to put it to them and to others that their security ultimately lies in a stable economic system and not in the law courts, not in anything else. If there is lack of peace between the vast agrarian population and them, then, they have no security. That system cannot continue; just it does not matter what your Fundamental Rights might say, what your Constitution might say or what your courts might say. Then, you arrive at a revolutionary situation which ignores all these things. Therefore, that is not the right way. We have to consider the reality and readjust, put an end to the big zamindari system, reform our land system, make it progressive and modernise it, at the same time keeping the old ways also, not uprooting the ways of the community.

Now, that balance has to be created. In creating that balance, repeated attempts to go to the law courts and check the various things will not help. For my part, I would advise on the one side, if I may say so, the State Governments concerned—if this amendment is passed, they have a certain power to go ahead with the laws that they have already passed—that they should exercise that power with restraint and wisdom, and that they should examine any hard cases that come to them. We shall help them in examining them and dealing with them. They should, if necessary amend their law here and there so as to deal with these hard cases, because nobody wants injustice or hardships. But, the fact remains that when you change the social system, when you change the agrarian system, the burden must fall on somebody. You cannot distribute your resources equally to all; if they are distributed unequally, the same thing happens and you start the other operation. Therefore, I would like the State Governments to look upon it from that point of view. I should like the representatives of the zamindars also to look upon it from the point of view of not trying to get something from a long litigation. They will not, I can assure

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them. They may gain a point here or there. The only parties who profit will be the lawyers.

Shri Hanumanthaiya (Mysore): May I say that it is the judicial system that is responsible and not any individual member of the system?

Mr. Speaker: Order, order. Let the Prime Minister continue his speech.

Shri Jawaharlal Nehru: I know that; I am not blaming anybody; it is always the system that is responsible, or lack of system, sometimes.

I beg to place this report of the Select Committee before the House for their favourable consideration. I can assure them that anything that is said here, we should listen to with respect and attention. I need hardly say that during the last two or three weeks since we have been considering this matter, we have given an enormous amount of thought and energy to it in a concentrated way. Although it has been here only for three weeks or so, we have perhaps compressed the work of months into it. What we have put forward has been carefully thought out and discussed. Naturally, if any valid reason appears to us to change a word or a phrase here or there, we shall gladly consider that. What is put forward is not lightly put forward.

Shri Kamath: May I raise my point of order.....

Mr. Speaker: Let me first place the motion before the House.

Motion moved:

> "That the Bill to amend the Constitution of India, as reported by the Select Committee, be taken into consideration."

What is the point of order?

Shri Kamath: I may state briefly why this motion cannot be proposed to the House. Apart from the fact which has been referred to by the Prime Minister in his speech that several documents and other materials were not made available to the Members of the Select Committee, a fact which has been mentioned by my hon. friends Prof. K. T. Shah, Mr. Naziruddin Ahmad and Sardar Hukam Singh, the vital fact emerges from the minute of dissent or rather the post script appended to the minute of dissent by Mr. Naziruddin Ahmad that 8-45 A.M. on the 25th of May, 1951."— these are his words:

> "I have not, nor as far as I could ascertain, no other member of the Select Committee has, seen the actual text of the Bill as finally settled by the Select Committee after several revisions. This has acted as an additional handicap in the way of the drawing up any accurate and up to date dissentient note."

The fact of the matter is that this Bill was at first finalised, I understand, on the 23rd May. Then, again, there was a last minute revision that night or the next morning. But, the Bill as finally settled by the Committee was not with the Members of the Committee when they wrote the minutes of dissent or actually signed the report. Therefore, the Bill which is ostensibly brought before the House as amended by the Select Committee, —the motion reads, the Constitution (First Amendment) Bill 1951, as amended by the Select Committee— is in my humble judgment not really so because the final text of the Bill as revised was not with the Members of the Committee at that point of time. Therefore, I submit that the motion for consideration of the Bill, as amended by the Select Committee, is not in order.

Mr. Speaker: I have not been able to appreciate the point of view of the hon. Member who has raised the point of order. Assuming that all that he has stated is true—I do not know how far that is correct—it is clear that the report which is placed before the House is signed by all the Members of the Select Committee, including those who have appended their minutes of dissent. The objection appears to be only to the final forms of the amendments. But, that does not mean that what is placed before the House is a thing to which the Select Committee had not applied its mind. Therefore, I do not see why this motion cannot be placed before the House. Of course, whether the Members of the House should vote for a particular amendment or not, is entirely a different matter. All that the hon. Member has urged may perhaps be grounds which may be urged for saying that the House should not accept this or that amendment because the final form was not before the Members. That is a different matter. The question that he has raised is that the motion as such cannot be placed before the House. I am afraid I cannot accept that position.

Shri Shiv Charan Lal (Uttar Pradesh): Sir, before the hon. Member commences his speech, may we know what is the programme on this motion so that we may act accordingly?

Mr. Speaker: Before the hon. the Leader of the House moved his motion, I was considering whether I should express to the House what I feel about the scope of the discussion at this stage and the discussions at the subsequent stages also, when we come to the clause by clause consideration, provided the consideration motion is accepted by the House. In this connection I would like to invite the attention of hon. Members that the question that is now before the House for discussion, so far as its general character is concerned, has been amply covered during the consideration of the motion to refer the Bill to the Select Committee. The general background has already been fully and amply discussed. That is one thing.

Then, the same matter, so far as the forms and the particular amendments are concerned, is again coming before the House in the clause by clause stage, and it would be better, therefore, to reserve more time for criticising the particular clauses and the amendments rather than take up the time now in general discussion which would practically mean a repetition of the same debate. That is my reaction.

However, looking to the importance of the matter, I do not propose to place any limitation. But hon. Members will do well to remember that they have to bring this session to a close within a reasonable time. They would, therefore, like to give more time for the clause by clause stage, rather to the stage of general discussion. But it is a matter for the House and I do not want to come in the way, unless the House generally desires it. I should be prepared to accept any suggestion for putting a time limit, if that is the general desire of the House. We may remember the fact—and I repeat it—that the debate now is going to be nothing else than a mere repitition of the same things that were urged on the previous occasion—99·9 per cent. if not full 100 per cent. Theoretically, it is always possible for people to say that they would urge new points, but I do not see what further new things can be raised. Of course new instances could be multiplied.

Shri Kamath: What about the Prime Minister?

Mr. Speaker: Order, order. Hon. Members should not compare the Prime Minister with another hon. Member in this matter. Though theoretically he may be in the same position as any other hon. Member, as a matter of realism, we must understand that as the Leader of the Government it is his duty to place before the House completely all the facts that were considered by the Select Committee and all the aspects of the question. That does not mean that every Member will be either in order or it will be proper for him to reply to every argument that the hon. Prime Minister might have advanced. So the hon. Member need not go with the impression that because the Prime Minister talked for about an hour and twenty minutes, so he will be entitled to have one hour and twenty minutes. That disposes of the point of order.

I may also invite the attention of hon. Members to rule 81 of the Rules of Procedure where it is stated:

> "The debate on a motion that the Bill as reported by the Select Committee be taken into consideration shall be confined to consideration of the report of the Select Committee and the matters referred to in that report or any alternative suggestions consistent with the principle of the Bill."

And so both on the rules of procedure and on grounds of propriety and of practical outlook, and also in view of the time at the disposal of the House, I would suggest that attention may be centred on the clause by clause consideration of the Bill.

Dr. Deshmukh (Madhya Pradesh): What about the choice of speakers?

Shri Naziruddin Ahmad (West Bengal): I had sent three amendments, but only two have been printed in the list here.

Mr. Speaker: I take it that he moves them together and the whole thing may be discussed together.

Shri Naziruddin Ahmad: But I have not moved them at all.

Mr. Speaker: Let him move them and then they can be discussed.

Shri Naziruddin Ahmad: I beg to move:

> (i) "That the Bill be circulated for the purpose of eliciting opinion thereon by the first week of the next session of Parliament."
>
> (ii) "That the Bill be recommitted to the same Select Committee which reported thereon for

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thorough enquiry into the circumstances necessitating each clause or part thereof and report by the first week of the next session of Parliament."

But then I should have the right to speak first on them.

Mr. Speaker: I have already called Prof. K. T. Shah. I shall give the next opportunity to Mr. Naziruddin Ahmad. I will place his amendments before the House.

Amendments moved:

(i) "That the Bill be circulated for the purpose of eliciting opinion thereon by the first week of the next session of Parliament."

(ii) "That the Bill be recommitted to the same Select Committee which reported thereon for thorough enquiry into the circumstances necessitating each clause or part thereof and report by the first week of the next session of Parliament."

Prof. K. T. Shah (Bihar): In considering the motion that is now before the House, I would like to make it clear from the outset that though I have been obliged to adopt the role of opposition it has never been adopted for the sake of opposition only. It has been said that under a constitutional parliamentary Government, the business of the Opposition is to oppose. Speaking for my part, however, I have never accepted that proposition, or the policy or the principle underlying it, at least while considering the Constitution. Wherever I see anything good, anything in the interests of the country, anything serving the ideals that we hold in common, that would be accepted by me and supported by me, no matter on what side of the House I happen to be, no matter who initiates those proposals. If, therefore, to-day I am obliged to oppose these amendments that have come before the House, need I assure the hon. Member opposite, and the House that it is not in any spirit of carping criticism, in any spirit of mere negation, or mere opposition that I have persuaded myself to rise against this motion, to submit certain notes of dissent to the report of the Select Committee, and tabled certain amendments.

[MR. DEPUTY-SPEAKER *in the Chair*]

A point was made by the Prime Minister about the complaint that only 16 months and passed since we adopted this Constitution, and that therefore sufficient experience had not been gained in the working of this Constitution. I am one of those who have emphasised the fact, that the Constitution has been in operation only for about sixteen months; and that period is not sufficient to give us enough experience, enough knowledge of the working difficulties of the Constitution to enable us to propose satisfactory amendments at this stage.

11 A.M.

I quite agree with the hon. Prime Minister that the matter merely of time is not so important. Whether it is 16 months or 16 years, if there is no experience gained, would not make any difference; and if experience has revealed some defects even in a shorter period, we may well try and remove them. What was intended, and insisted upon and indicated by this reference was that, actually, within that time, the experience that we have gained is not enough to justify us in undertaking the alteration, the amendment of the basic Constitution of the land we are now attempting.

This is not an ordinary law that we are dealing with. It is the fundamental Constitution of the country assuring a system, a provision for the working or conditioning of our whole public life which is at stake.

Mr. Deputy-Speaker: The hon. the Speaker has already referred to the rules about the discussion at this stage. The House is committed to the principles of the Bill. These matters referred to by the hon. Member ought to have been raised at the earlier stage of the Bill and not at the time of the consideration of the report of the Select Committee.

Shri Kamath: He was absent then.

Mr. Deputy-Speaker: The House is seized of the matter. There is no good saying now that the Constitution (First Amendment) Bill should not have been brought. The House has accepted the principle and we are bound to look into the Bill and there is an urgency also to modify certain provisions. Whatever has been done in the Select Committee it is open to the hon. Member to say that a particular thing should or should not have been done but beyond it, any other matter is not relevant here.

Prof. K. T. Shah: Sir, I am not going beyond, I hope, the scope permitted to speakers on this occasion. I was saying—if you had allowed me to complete—that I have accepted myself the principle, as accepted by the House, whether I was present or not,

whether I took part in that debate or not. And, in this, I do not follow my learned friend the hon. Dr. Ambedkar who says that he is obliged to obey the judgment of the Supreme Court even though he may not have respect for that. I have both obedience and respect for the decision of the House. It is, therefore, not for me to question the necessity of this Bill at this stage. Far from it. But I think I am within order in pointing out that the experience we have gained of the working of the Constitution, and the consequent need for particular amendment—not of the Bill in general—sought to be made, is not enough; and that I trust is not out of order for me to point out even at this stage.

My remark was, besides, necessitated by the reference of the Prime Minister himself. In sheer justice to those who have taken that point, it was necessary for me to give this much rejoinder or explanation.

As regards the particular matters urged, you will agree that the Constitution is, whatever its stability in times of emergency or revolution, a sacred thing, with which we have to work. Changes, therefore, in its very basic articles should not be undertaken very lightly. For instance, this question of special provision for the so-called "backward classes of citizens" is liable, not only to a misdirection of the entire system of Constitutional life we hope to live in this country, but it is liable even to be abused for party reasons. I hold, therefore, the view that, if you really think of this country's millions, educationally, socially or economically deficient, backwardness is the rule, and forwardness is the exception, if at all. It was I who has said that it is something like 80 per cent. of the population which is illiterate; and if you take women only, perhaps 95 per cent. is illiterate. On this matter we have got a whole Chapter of Directive Principles of Policy, which though not "justiciable", are certainly intended to embody the intention of Government, and enshrine our ideals of the life to be in this country. We have yet to give concrete shape to those heads which would change the "backwardness" into something like a normal, reasonable standard of living and working for the masses of our people. In this connection, may I add that we are passing through an age when idealism is very much at a discount; and those who are charged with holding ideals are usually ridiculed as lacking in a sense of practical statesmanship. I plead guilty to that. I am afraid that—no matter what ridicules showered upon me may be, no matter what the prophets of realism may insist upon—I shall remain incorrigible in this regard. It is therefore, impossible for me to overlook the force of the ideals embodied in the Chapter on Directives of Policy. My greatest regret is that this Government has not yet been able to implement substantially, or even up to a reasonable extent, many of the great things promised in this Chapter, so that the Chapter remains so much paper promises, or eye-wash; and that, in reality, these prophets of realism and practical wisdom do not insist upon giving effect to any of these, notwithstanding their claims for realism in this regard.

The amendment now proposed to be made is, thus, not only offending against all the grandiose promises which were equally held out to all, but lays a new emphasis on "class consciousness," or backwardness of certain classes, rather than of citizens as a body. This, in my opinion, is highly objectionable. We shall consider that matter when the amendment comes up specifically on that subject. But I cannot help feeling that, notwithstanding the actual language embodied, —which includes a reference to both articles 15 and 29(2)—what is stated in the amendment is positive, not negative, whereas 29(2) lays it down in negative terms that no citizen shall be barred from any educational institutions; on grounds of race, creed, class etc. In this amendment we are proposing—and please do not misunderstand me, I am not against the basic idea of this amendment,—we are authorising and permitting *special* provision being made for "backward classes of citizens" educationally or socially. The word "economically" does not find any place here. I will try to place the matter more clearly before the House when the time comes. But here I must add that the educational, social and material development of the "backward classes" is a sacred obligation, which none of us deny. The hon. Prime Minister was only just when he said that every Member of the Select Committee, and I am sure every Member of this House, shares that desire with him. But when you think of it with the background of the history that we have had, we cannot but recognise that it would be the word 'classes' that would be stressed, and not the 'citizens'. It is, therefore, my regret that the amendment does not really carry the intention, either of the Chapter of Directives, or of the sponsor of the Bill into effect in that regard.

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The greatest need in this country at the moment is bread; and according to the calculation that I have personally made two out of three citizens of this country do not get even one meal out of three that are necessary to keep body and soul together; and that, too, of the coarsest, the poorest and the scantiest. If 3,600 calories are supposed to be necessary, according to the experts of the League of Nations, for keeping the human body in a condition to work efficiently, we in this country hardly get 1,200 on an average. And believe me, the term "average" is very misleading; it is a fallacious idea. The average is not the actual or real for vast masses of our country. It is the flat level, the average, over millions of this country, where perhaps one per cent owns and monopolises one-third of the total wealth of the country, and two-third may not get even half the "average" for each of them. The average of 1,200 salories would mean less than 600 per day for each one of 67 per cent of the population. If, as the Planning Commission has told us, the average per capita income in this country in 1948-49 was Rs. 265, the actual per capita income for 25 crores, perhaps, of our people would work out at less than Rs. 12 per month, a very poor, misleading, insufficient standard of living. Your Chapter of Directives has declared that a normal standard of living shall be secured for all. Here you are providing, by a specific amendment of the Constitution, special facilities for what you expressly state as "backward classes of citizens". That would naturally draw attention, focus attention, upon "classes" rather than upon "citizens"; and, if I may say so, throws the larger problem that is facing us, the people and the rulers of this country, somewhat in the background, to the advantage only of certain classes which may be more vocal, but to the disadvantage of the masses as a whole.

Take another amendment that has also been proposed and accepted in the Select Committee, with regard to the freedom of speech and expression, or the Press. Whatever may be the role and function that has hitherto been discharged by the Press in this country, it is unquestionable that, if we wish to live a civilized democratic life, freedom of speech and expression is indispensable. We want to convert people, not by blows but by argument, not by force but by reasoning.

If the argument is advanced that the freedom of the Press and the freedom of expression must be inviolate, I am not conveying thereby that there shall be no reasonable restriction on that freedom. On the contrary that particular amendment has my support, viz.: that restrictions should be there under certain conditions or circumstances, but that they should be reasonable. All I wish to say is that the categories in connection with which those restrictions are to be imposed are categories that not only were outside the scope of the original article, the amendment proposed has extended the scope for restrictions far more than is just either to the Press of the country, the publicists, or to the freedom that we think we have obtained in this regard.

The introduction, for instance, of "friendly relations with foreign states" is a factor for imposing a new restriction; and, as such, makes an extension which I think is not justified nor is necessary. The working of the Constitution has not revealed—it may reveal hereafter anything that would show that this particular extension is necessitated by experience. Even if one were to concede that that is a legitimate reason for imposing "reasonable" restriction on the freedom of speech and expression. The actual terms of the proposed amendment are indefensible. Let me add that the freedom of the Press as such is nowhere mentioned in specific terms in the Constitution; it is only embodied or implied in the freedom of speech and expression; at the time of the passage of the Constitution through the Constituent Assembly, I had pointed out the omission; but it was thought to include the freedom of the Press as well. Here, therefore, is a restriction on the freedom of speech and expression which I think will materially affect the freedom of the Press in India; and the reason given is not proved by any danger to our friendly relations with any foreign State. There is no clear and present danger to justify this inroad upon a primary freedom of the citizen; and so we cannot accept the proposal.

However out of date those conditions may be, they were held to be sacred. It was in virtue of this freedom that England of the 19th century offered asylum to all those who were not satisfied with the prevailing regime in Europe that did not allow the fullest freedom of speech and expression and of the Press and who could enjoy unrestricted freedom there. Even as late as the last world war, when the matter was brought to the notice of the British Prime Minister by the German Dictator, that the Press in England in season and out of

season was criticising him personally and was making defamatory attacks on the head of the State, even the Conservative Government of the day did not think it necessary to impose any restrictions upon the freedom of the Press in that country. What has happened in India, in the last 16 months since the new Constitution came into operation, to necessitate such a radical change in this fundamental regard?

There is, no doubt, an advantage as between a written and unwritten constitution, in favour of the latter. The Constitution of England is not a written definite document. It is made, not so much by the Parliament as by its courts of law. The interpretation of the Common Law, as given by the judicial authority in England, has not only created but guaranteed and maintained all the freedoms of the individual in that country, perhaps the widest in scope and greatest in degree in the world. On the other hand those who have written Constitutions have always found it more and more necessary to elaborate and keep pace with the changing circumstances, either through specific amendment or through judicial interpretation. The American Constitution is a written one. It grants this freedom in more absolute terms; but there, also, under the so-called police powers of the State they have evolved and elaborated and brought about a number of implied restrictions, which every time have been discovered and declared to be implicit by the courts. No one has thought it necessary to question the decisions of the Supreme Court. When they have accepted the reasonableness of certain restrictions, or when they refused to recognise the validity of certain State or Federal laws in that regard no one has challenged their verdict. But we have chosen to have not only a written Constitution, but a very exhaustive categorisation of the factors which should limit those restrictions. At the time the Constitution was passing through the Constituent Assembly, it was pointed out, time and again, that it was not wise to lay down these in so many terms, because one does not know what other contingencies might arise in the future. By putting down the various reasons or factors which might necessitate the imposing of restrictions, you left hardly any scope for the judiciary to determine, except in so far as the restrictions were "reasonable" or not.

It is, therefore, a new factor which is now being introduced by the

17 amendment. At the time of the draft of the Constitution we did not consider it necessary, even though we have adopted a policy of laying down as many contingencies as we could imagine, which might necessitate such restrictions. I maintain, therefore, that no case has been made out why this new, and a very serious ground for restriction should be introduced. With all the goodwill in the world, with all the sympathy for the difficulties and delicacies with which the conduct of foreign policy is beset under the present circumstances, one cannot see the justification for this extension. I do not doubt for one minute the *bona fides* of the Prime Minister. I am perfectly certain that, if he is not influenced by his guardian angels who persistently prevent him from straying into the right path, he would himself be most averse to impose the restrictions. He is a born liberal, and he remains one. In saying this I am not indulging in any flattery. But there are guardian angels and guardian circumstances whereby he is deflected from the path of righteousness, being burdened as he is with so many duties and responsibilities. Being situated as he is in the very centre of a changing kaleidoscope, he has necessarily to take the moment's consideration as being more important than considerations of "long range" policy. But, for me, however important momentary considerations may seem, in this particular case the momentary consideration also does not appear to me to have made out a case for the restriction of the freedom of speech or expression, and consequently, the freedom of expression of either the individual or the press in this country—the long range growth of the democratic freedoms should not be ignored. I trust that the promise he has made in another connection to newspapers, about a new and wholesome Press law, will be implemented soon; and shall, I say, that the freedoms or conditions under which the Press of this country will function will be definitised, and placed before this House.

The Press in this country, it need hardly be added, is a "class" Press. It is in the hands of a few—they cannot be called Lords — magnates, who naturally are very vociferous and influential. It is not always that they really take a national rather than a "class" view of any problem of Government or policy. Those of us, who have some experience of the class consciousness of the Press in India, cannot but feel that, if reasonable restrictions are imposed upon them, they

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will not really hinder their own class consciousness being emphasised. The classes which have been and are backward will always remain backward and unvocal, unless and until a complete change in the social system occurs. That apart, every innovation, addition or extension of restriction on this freedom by this amending Bill must be opposed. Here is another example, concerning "incitement to offence", which is much too vague a term not to be objectionable. It is not in harmony or in tune with this Constitution, its spirit or even the letter of the Objectives resolution. "Incitement to offence" may involve a very petty or small technical offence, which should not be made the ground for restricting the freedom of speech or expression, as embodied in the Constitution and with the limitations which the Constitution has already imposed.

The suggestion was made—I hope I am not going out of the bounds of convention in this matter when I say that—the suggestion was made at one time that this should be changed into "incitement to crimes of violence", that is, such offences as might endanger public security or the security of the nation. Everyone would be at one with the Prime Minister when he says that every liberty we possess may have to be restricted when it comes to the question of the integrity and independence and continued existence of this country as an independent sovereign State. That, of course, is an indisputable proposition. But we have made separate provision for dealing with emergencies in our Constitution. With the right person being on the right spot at the right moment, there is no fear that, in the moment of emergency, there will not be persons at the helm who will take courage in both hands, and deal with the situation as it arises and as it requires. But I submit, with all respect, that is no reason to monkey with the Constitution now. The possible happenings that may take place in sudden emergencies threatening the very existence of the country will be dealt with by the man on the spot at the time. He must have confidence in himself, and not forge an instrument in advance that may never have to be used. It may have all been very well for an imperialist foreign Government to forge a weapon which was never put into execution. But, I say with all respect to the sponsor of this Bill, it does not behove us, for fear of possible emergencies, that we should today, make a general provision, and limit the freedom of speech in the interest either of public order, or in the interest of a possible danger of incitement to offence. While on this point, may I add that I am one of those who had complained that we did not get sufficient material on which to frame our judgment on the actual phrasing of the amendment. Now there is another case in which it is possible perhaps that we are mistaken, that a different interpretation may be placed upon the original clause, which has brought about this last item, namely "incitement to offence". So far as I could see from the extracts from the judgments that were made available to us, it is only an *obiter dictum* of a single Judge. It is not the judgment of the Supreme Court which has sanctioned, which has, as it were permitted, allowed or recognised, that crimes of violence may take place with impunity because of this article. I do not think that is the spirit or even the letter of that judgment. It is, I venture to say, not the meaning of those remarks which the learned Judge on that particular occasion made. I, therefore, feel that merely because of a passing remark, a mere observation, somewhat exaggerating the possible circumstances, you should not formally restrain the freedom of speech and expression in the manner this amendment seeks to do.

In this connection may I bring out another feature of this amending Bill, which seems to me to hold the scales most unevenly as between the vested interests and the non-vested interests? I refer to the amendment made in the Bill, which would go to reserve any legislation passed by any State Legislature affecting the vested interests of zamindari lands, for the consideration of the President, and for his assent. On the other hand, any legislation that may affect the Fundamental Rights of the people in regard to freedom of speech or expression receives no such safeguard. I ask you, Sir, is this even justice? The Fundamental Rights of the people are far more important, I venture to submit, than the rights of the zamindars, whose rights have not been acquired always in the most approved manner. How many of them have acquired them by honest means is a matter into which I do not think I will go now, though a French economist has said "all property is theft" —and zamindary is a property. Though it may be a child of robbery, violence or cheating, it is one that receives so much protection from this Bill, that any legislation affecting the abolition of these vested interests will have to be specifically reserved for

consideration by, and for assent of, the President.

Babu Ramnarayan Singh (Bihar): What about high salaries?

Prof. K. T. Shah: That is different. High salaries, after all, are some remuneration for the work you do, however disproportionate it may be. There may be people who receive salaries without doing work — I am not concerned with that. But in this particular case, if you do not insist on the law of limitation and go into the background and history of zamindari rights, I do not know how much of these zamindari properties will survive a searching examination on moral or social grounds considered as satisfactory.

My point just now is not about the origin of landlordism or land ownership. My point is only about the unevenness of justice as between the landed interests, and the rest of the freedoms which are guaranteed to us in the Constitution. I trust, therefore, that here is a point in which the House and the Prime Minister will, I hope, agree with me, that in the mere interests of even-handed justice, in the mere interests of equality of all citizens, this right of freedom of speech should be regarded as sacred as the right of the zamindars. It is a matter of general importance which I have referred to incidentally, but it is nonetheless a matter, in my opinion, going to the root of the matter, under which this amendment has been prompted and brought about.

Yet another matter with regard to the question of the abolition of zamindari. I am sure the Prime Minister recognises it that, by the mere removal of large-scale zamindars we are neither solving the food problem, nor the land problem, nor any problem of national economy. I am no advocate, no champion of the large zamindars. But I must point out this that the larger zamindars being necessarily limited in number, would be much more easier to liquidate than a proportionately very much larger number of peasant proprietors would be. They are apparently sought to be created through some of the legislation that is now being brought forward for validation, or which has been questioned. The larger zamindar is more advanced, in the sense that he is able to see his own advantage of better technique in cultivation, better methods of farming and working the land, better means to provide all these. The smaller proprietor, even if he was able to realise the need for such improvements, would not have the means, would not have the knowledge, would not have the opportunity, to do it, and unless the State comes to his rescue by collectivisation, that is to say, unless the State goes to the rescue of the entire landed interest in this country by completely re-conditioning the cultivation of land, the holding of land and the working of land, I am afraid we are not going to solve the agrarian problem.

That does not mean that I stand by or would like the zamindars or the talukdars to continue for a day longer than is absolutely unavoidable under this legislation. But I do wish that the point should not be lost sight of that these pests or parasites of society, being removed, will perhaps leave their roots still farther, and perhaps make worse the situation by other, still smaller, narrower, more jealous, more restricted, substitutes for them. And they might vitiate the economy of this country. I have, therefore, suggested that while you take power by this amendment to facilitate, to expedite the abolition of land-ownership in this country, care should be taken at the same time to see that new evils are not brought into being or perpetuated. After all, if you really believe in the "dynamic urge" which has necessitated this amendment, if you really believe that the entire social system requires to be changed on the basis of equality, then I think it is far more necessary to see that a complete reorganisation of the agrarian economy of this country takes place. At the same time laws should be framed in the States with a view to see that these changes are properly given effect to. Do not give rise to new vested interests of smaller men or numerous men who perhaps would stand much more in the path of agrarian revolution than the limited few zamindars can ever be. That is why I suggest that the present opportunity should be seized whereby the fundamental changes I am suggesting should be made.

Let me also mention at the same time another thing. This amendment confines itself mainly to landed estates and the taking over of the landed property. Why should not the spirit and the letter of it be extended to personal property?

Pandit Thakur Das Bhargava (Punjab): May I know whether the hon. Member wants the elimination of peasant proprietors?

Prof. K. T. Shah: My proposition is contained in my amendment I have tabled; and I will deal with it when I come to it. But I may say, for the satisfaction of my hon. friend, that

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what I am suggesting is a universal system of cooperative farming on a large scale. That is not necessarily abolition of private proprietors in land as such. It is securing of all the necessary economies and the efficiency, which the small zamindar is not willing to do, and which the small peasant proprietor left to himself will not be able to secure.

I was saying that you are confining this amendment only to the landed estates. Why should you not extend it to personal property as well. An article of the Constitution does permit you to take over any enterprise, any business, any undertaking, whether it is joint stock company, or individually managed, with such compensation as the Constitution may allow. I suggest that the same principle should apply in the treatment of personal property as in regard to landed property. You have already taken over such properties in driblets. If you should decide to take over any business undertaking, any industry, any mill, or factory, or workshop, you should be in a position to say that the same principle, the same logic shall apply in the case of personal property, or movable property, as in the case of immovable property.

In this connection there is another point which I must bring to the notice of this House. It seems to me to be some inequality of treatment in regard to that particular sphere or sector of the national economy, where, side by side, you want to continue both private and public economy. That is to say in one and the same field, you keep up both a socialised enterprise and also in the same industry or in the same business private proprietary enterprise. I do not agree with the principle that the two should go together. I do not like what is called 'mixed economy'. I know you have accepted it. But, respecting your assumption in that regard, and taking it as the law of the land, or as the established system that there will be for some time mixed economy—that in one and the same industry there may be a public sector, a socialised sector, and a private or individual sector. I suggest that, in sheer fairness, the dice should not be loaded only in favour of the State, however just the measure may be. If you want to get private property out, do it openly and directly; but do not use indirect methods, oblique methods. I say straightway go and say: "We shall from such and such a date take over the entire cotton textile industry of this country, or the entire jute industry, or iron and steel industry of this country". But do not say that we shall allow an enterprise to continue in the same field which we shall partly socialise. If you do so, then keep the balance even as between the two sectors; do not impose restrictions on the private portion of the enterprise that the State does not share. That I wish should be made clear and there is an amendment of mine to that effect also.

I now pass on from this larger, to somewhat minor propositions, which, however, in my opinion, are no less important. There are amendments to articles 85, 87, 175 and 177 which make a change from the Houses of Parliament being summoned, to the power being vested in the President, or the Governor, or the Rajpramukh, as the case may be, to summon the Legislature. I think that this again is a large change, for which no justification has been given. No experience has revealed its necessity. Nothing has been shown to us to warrant the change. If you say that your original provision was defective, I am afraid that would be no reason why you should change it, because light has now dawned upon you.

The existing provision in the Constitution on that point says that the Houses of Parliament "shall be summoned". This is a perfectly workable proposition in my opinion. Either the date for summoning the next session may be appointed by the Speaker or the presiding authority at the time of prorogation or even dissolution, or arrangements may be made by which, at the time of the dissolution, the date may be fixed by the common consent of the new House meeting for the first time in the new sessions. The Upper House, so far as I can see—the Council of States—is by its constitution not ever to be dissolved. It is to be in permanent session, technically speaking. Naturally, then, its adjournment or prorogation should be only from time to time, and ordered by its own motion. Its membership is renewed proportionately every two or three years, as the case may be. The House of the People will certainly be dissolved at the end of five years, if not earlier. Now the amendment wants to put this power in the hands of the President. "The President shall summon", it says. But if he refuses to summon—what will happen? Here is, in my opinion, a great danger for paving the way to dictatorship. The President may not summon. There is no power on earth to compel

him to do so. Under this provision, as you are changing it now, the President shall summon each House of Parliament to meet at a fixed place and time and so on; and that, more than six months shall not elapse between the last day of the previous sitting of that House "and the date appointed" for the first sitting in the next sessions. I am not a legal expert. But as a simple man in the street, as a student of this subject, as one who is aware of history elsewhere, I cannot conceal from the House my fear and serious apprehension that this change is not desirable nor necessitated by anything that has happened so far. After all we have had no experience of the Parliament being dissolved and summoned. But in the new wording as it is, there is an implicit, fear in not vesting it in Parliament, but vesting it in the executive authority to summon either House of Parliament. In America this power is vested in the Legislature. I do not see any reason why we should not have the same provision. Even if the presiding authority of a Chamber refuses to summon, a certain number of Members may *requisition* that the House be summoned on a given day, at a given place, at a given time, for the business stated in the requisition. There are plenty of ways of avoiding the interposition of the agency of the President for convening Parliament. Personally, I regard it as most dangerous to arm the President with power such as is mentioned in this amendment. I feel therefore that this amendment, if there were nothing else, at least justifies the remark that the Bill as such is somewhat hastily conceived; that there is no immediate necessity or justification for several of its provisions; and that, in the sweeping manner in which the changes are proposed, care is not taken, thought is not given to very likely possibilities. Again I beg you not merely to ridicule those who think of long-range possibilities. Do not laugh at those who are afraid of history repeating itself even in our country. Do, please realise that amendments of this character are considered, scrutinised, examined from every point of view, and are made, if you so insist, only with the greatest safeguards.

There is only one more point which I like to add in regard to these remarks that I have been making; and that is with reference to the Schedule attached. A Schedule of Acts attached in this manner to a solemn document like the Constitution and its amendment is not in the best taste, not in the fitness of place. For consider this. Not all of these laws which are listed in the Schedule have been pronounced upon by the Supreme Court, by that body which we have solemnly invested and charged with the function of interpreting our Constitution. True, we are told that every one of these laws, or almost every one of them, has been carefully considered by the President and scrutinised by him. But the President does not act on his own. The President does not act as the Supreme Court, impartially and independently of the executive. After all, the President is advised by his Ministers; and his Ministers are parties to such legislation, or have party sympathies with such legislation. If you want to uphold the sanctity of the Supreme Court, if you want also to maintain the permanence of laws, if you do not wish it to be a good precedent for your successors to play with the Constitution, as it were, and change it when the slightest difficulty occurs, do not set this precedent. Even if you must validate these laws, do so after they have been considered, on a reference by the President, by the Supreme Court, and pronounced upon by that body. The President has power under the Constitution to make such a reference. Let him make such a reference. A reference has recently been made with regard to the propriety of delegated authority, or the power of delegation. Let a similar reference be made to the Supreme Court. Let the Supreme Court give you its considered judgment whether these laws, or any of them, are inconsistent or incompatible with any of provisions of the Constitution or the rights conferred by it. Where they take away, diminish, abridge the liberties or the rights given there, and if you make this amendment, then by all means validate them. But if they do not, if they are otherwise acceptable, if, as has happened, I believe, in the case of Nagpur and Allahabad High Courts where the laws have been actually upheld, why do you disfigure—I apologize for the word if you feel that the word is too strong— why do you add to this Constitution a Schedule, an *ad hoc* Schedule of eleven laws to say that they shall all be summarily validated, because you say so, though no one has pronounced upon it except the President, who, after all, is advised by you, and who does not function independently or impartially.

That applies to all existing laws, and these have been particularly mentioned in the Schedule. All other existing laws which come in the way of the proposed amendments are sought to be similarly validated in this manner. I

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suggest that is also detracting from the sanctity, from the stability of the legal system, or rather of the particular law, which should not be undertaken lightly.

I suggest, therefore, that you should accept an amendment, or propose your own amendment, by which some guarantees would be given that the acceptance or validation of these laws shall not be taken *ipso facto* by the passage of this amendment; but it should be assured and proved necessary by reference to the Supreme Court, which is our sole judicial authority for this purpose; and only on a decision being given by that body, pronouncing some of this legislation to have actually gone counter to the spirit of the Constitution, or to have taken away from any rights given under the Constitution, and so come up against this amendment, only in that case, if you think it necessary as a matter of policy, should you validate them. Validate them by a special amendment, if you like. Take power in this Act which would permit, on such judgment being given by the Supreme Court, validation of these laws automatically. I have no objection to that; or I would be reconciled to that. But I am afraid that adding a Schedule containing a number of laws being validated without consideration by this House or by the judicial body, is stretching the need and the justification for this amendment much too far in my opinion.

I am not a lawyer myself in the sense of being a practising advocate. I do not know, and I have not considered, the actual technical merits or demerits of the laws hereby intended to be validated. But I do feel, as a general apprehension, that the summary procedure of validating laws, or making laws which are inconvenient in one respect validated by a stroke of the pen, as it were, is not proper.

I, therefore, think that this Constitution (First Amendment) Bill, undertaking, as it does, radical changes in the Constitution, and making also sweeping amendments in existing legislation and validating some laws already passed which might prove to be inconsistent with the Constitution, without any justification having actually been given, and above all the interference that it makes with the rights of personal freedom of speech and expression, is objectionable, as a whole, and in the several parts that I have mentioned, which I trust when the time comes will be suitably amended.

Shri Naziruddin Ahmad: Sir, I am grateful to you and to the House that I have at last been given an opportunity of raising certain fundamental questions relating to some of the provisions of this Bill. Without going into details I should submit with regard to the amendment of article 15 that though on principle it is very good and an attractive looking thing, yet I believe there is considerable amount of Madras politics behind it. It is an open secret.....

Dr. Deshmukh: It is an all-India problem, my dear friend.

Shri Naziruddin Ahmad: Quite so, but it arose from Madras politics. It is an open secret that there is a good deal of discussion and also passion attached to this. Though the article as it now stands is not open to much theoretical objection I think the House should express its desire that it should be properly and fairly worked. The objections were so insistent that even the Select Committee has added a note of warning providing some consolation to those who might be affected by it. Things are not what they really seem.

Then I come to article 19. There are one or two important matters in this connection. The first is that Government and particularly my hon. friend, Dr. Ambedkar built up a case for amendment largely on the basis that the Constitution had been misinterpreted by the Courts and the hon. the Prime Minister also gave expression to a similar feeling. I believe the points which I am going to suggest would help them to reconsider their decision in many respects. One difficulty which was felt by Dr. Ambedkar was that sedition under section 124A Indian Penal Code and preaching of class hatred under section 153A Indian Penal Code have been declared *ultra vires* by the Punjab High Court and the hon. Law Minister confessed that he did not know what to do. He was faced with two alternatives, namely either to scrap sections 124A and 153A and leave a void or to undertake what he considered to be a very laborious and almost super-human task of amending these sections to bring them into conformity with clause (2) of article 19 as it now stands. The other alternative he said was to amend the Constitution. Here they found themselves in a dilemma. I should think that there is no such dilemma at all. In fact the results should not have been unexpected. The results brought about by the decision of the Punjab High Court, namely that the laws relating to sedition and preaching class hatred are *ultra vires*

was a thing really intended by the Members of the Drafting Committee in the Constituent Assembly as also by the Members of that Assembly; they clearly wanted to kill the law of sedition as it then stood, but then no consequential action was taken. Now they are amazed at the result which was arrived at by their own act. They actually wanted to kill and to revive it. (*An Hon. Member*: How do you prove it?) I will show you. I am grateful for the interruption. It shows that some Members are sceptic about what I am saying but I am armed with original authorities to prove it. 'Sedition' was explained in the celebrated Tilak's case. There 'absence of affection' was considered to be 'disaffection'. That was the extreme limit to which Sir John Strachey went in dealing with Tilak's case because Tilak was considered to be a very undesirable person, and so the law was stretched to the uttermost limit to convict him. The matter again came up before the Federal Court, that is before Sir Maurice Gwyer, the Chief Justice of the Federal Court. It was in Niharendu Datta Mazumdar's case. (*An Hon. Member*: He is now a Minister in West Bengal.) Mr. Datta Majumdar would never have been a Minister if his conviction had been upheld. He was convicted in Calcutta of sedition. He spoke rather too freely, a thing which should now be tolerated by all freedom-loving people, but he was convicted under the old standards laid down in Tilak's case and the conviction was upheld by the Calcutta High Court. He came to the Federal Court presided over by an English Judge. He had a sense of independence. He explained: We are going to have independence. The old law of sedition in section 124A was in a different context when the British Government did not feel safe from criticism. It was held in that case that mere adverse criticism is not enough. Sedition, he said, is an offence only if the words lead or are likely to lead to breach of the peace or public disorder. He said it was too late in the day to urge now that sedition existed today as it was understood in Tilak's case. So sedition law should have been adapted and it should be brought on a par with the British law, that is any statement should not only be defamatory of the Government but should cause or at least tend to cause grave disorder to the public. That is the law of sedition today. Sir Maurice Gwyer said that the law of sedition cannot be invoked to help the wounded vanity of high officials but there should really be some grave public menace. This case was again reconsidered by the Privy Council. In Sadashiv's case the Privy Council said that the English law was not applicable in India. They said that Tilak's case actually decided the law correctly. So according to this case absence of affection for the Government would, if preached, be punishable. I believe there are many Members in this House who have absence of affection for some members of the Government.

An Hon. Member: May I know if it is necessary to go into the history of all these matters?

Shri Naziruddin Ahmad: If the hon. Member will have a little patience, he will find the immediate necessity. The Constituent Assembly of which my hon. friend was not a Member actually considered 'sedition'. They were in a dilemma as to whether they should go by the interpretation of the Privy Council or they should go by the more liberal rule adopted, more in conformity with the new set-up laid down by Sir Maurice Gwyer and they deliberately and with full knowledge, adopted the law exactly as it stands in England. The House will be pleased to note that I am particularly grateful to my hon. friend who interrupted me for putting this question. It shows that there is considerable misunderstanding on the subject in the House. In the Draft Constitution, in article 13, which now corresponds to article 19, there was clause (2) similar to the one we have now and in that clause 'sedition' was one of the items. The Government would be able to make a law as to 'sedition' in order to curtail people's right of freedom to speak. That is to be found at page 17 of the Draft Constitution as it was prepared by the Drafting Committee which was, again, in accordance with fundamental principles laid down by the Constituent Assembly itself.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

Then, for various reasons best known to the Drafting Committee, a very illustrious Member of the Drafting Committee, who is also a responsible Minister of the House, namely, Mr. K. M. Munshi, undertook the task of putting the law of sedition on a par with the English law, the most hated law and which was declared as the most obsolete law by Sir Maurice Gwyer. In fact he moved an amendment on behalf of the Government and that is to be found in the proceedings dated the 1st of December 1948 on pages 730 and 731. Mr.

[Shri Naziruddin Ahmad]

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Munshi moved an amendment and the effect of the amendment is sufficient for our present purposes. It is found on pages 730 and 731 of the proceedings dated 1st December 1948. He wanted the deletion of the word 'Sedition'. He left the House in no doubt as to his meaning. He spoke in very eloquent terms—I do not wish to read his speech—that the law of sedition as explained in Tilak's case was obsolete, and that it is not proper or dignified for India in the present set-up. That argument is to be found on page 731. I do not wish to tire the House by reading the speech. I am absolutely clear and if there is any doubt in any hon. Member's mind, he can refer to it. I have the references with me.

Shri Kamath: Is it too long?

Shri Naziruddin Ahmad: Not very long. However, I do not think it necessary to read it and tire the House. Those hon. Members who were present at that time, could sense an atmosphere of independence and a sense of high aspirations as to our liberties. Many can well recollect that atmosphere. Mr. Munshi gave his arguments and delighted the House and the House cheered him almost madly, if I may respectfully use that word. He said that we do not want the law in Sadashiv's case in the Privy Council and that we want Sir Maurice Gwyer's law, that we want the humanised law of sedition that no one should be convicted of sedition unless he insults the Government and that insult is intended or is likely to cause grave menace to public peace. By Mr. Munshi's amendment the law of sedition under section 124A was rendered obsolete.

After this, I should have thought that Dr. Ambedkar or at least Officers of his Department who are highly paid should have taken up the matter. There is an article in the Constitution which enables or rather enjoins upon the Government the duty to adapt all the then existing laws in terms of the Constitution. There are a few laws which are affected by the Fundamental Rights. Section 124A was one of those which was specifically mentioned as requiring reconsideration. They have absolutely forgotten about it. As a Bengali proverb says, they began to sleep with mustard oil in their nostrils.

Hon. Members: What is the Bengali saying?

Shri Naziruddin Ahmad: It is:

Nake sorsher tel diye ghumuchhilo.

They were enjoying sleep with mustard oil in their nostrils.

Dr. Deshmukh: Snoring.

Shri Naziruddin Ahmad: Absolutely snoring, forgetful of their duties in this respect. And they are now surprised at what has happened. They themselves had forgotten their duty and they are surprised that the Punjab High Court has rejected sedition in its present form. Their judgment is "utterly unsatisfactory", to quote the words of the hon. Dr. Ambedkar. Not only the judgment of the Punjab High Court, but the judgment of the Supreme Court is also "utterly unsatisfactory" according to him. But, what have they done? They have only adopted the spirit and intention of the Constitution. The Constitution was so amended and the House, at the instance of Mr. Munshi, adopted the more humane English law than the old archaic section 124A. The Punjab High Court, when they gave their judgment, they discussed all these. This matter has been considered by the Supreme Court in two cases. I have the cases with me. The hon. Dr. Ambedkar says that he had carefully read them. I think the carefulness of a Minister who is very hard pressed for time is not the same as the carefulness of a man like me, who has ample time and a desire to read. I submit that this question has been considered carefully in those two cases. They have specifically referred to section 124A that the Draft Constitution mentioned sedition as one of the subjects under which the Government could cripple the activities of the public, but that was removed and the words 'security of the State' were inserted in article 19(2) and it was held that sedition would be covered by the provision that Government can make laws for the 'security of the State' or when there is a great danger threatening to overthrow the State. This was the point.

Shri Kamath: What are those two cases?

Shri Naziruddin Ahmad: One is the Ramesh Thapar case. I shall give the other reference also. But, that is not very important.

The history which I have narrated before the House was the reason for the Punjab High Court and the

Supreme Court to hold that the law of sedition is void. The hon. Minister the other day said: "What am I to do; are we to allow the law to lapse like this?" In reply, I say: "What is the House to do; what is the Government to do; are we to go back to the old barbaric days of British Imperialism, or are we to stick to the days of independence and the days of realisation of our dreams?" I think the answer is clear. The procedure to have been adopted is so absurdly simple that probably it never troubled bigger heads. The problem was to adapt section 124A and to bring it in conformity with clause (2) of article 19 as it now stands. There is no need for any amendment unless you want to make normal criticism of the Government an offence of sedition. Much of the criticisms in this House, unless protected by the Constitution, would be, offences under the law of sedition, 'want of affection', etc. I submit that the law of sedition and also, incidentally, section 153A which has also been mentioned in those judgments ought to have been adapted. Not that adaptation was not known to them. Numerous adaptation orders are being passed. The Constitution gives the Government two years to adapt; by an amendment in this Bill, Government again wants to extend it to three years. What for? To sleep again with mustard oil in their nostrils for one more year. Dr. Ambedkar asked: "How can I undertake to adapt all the laws; is it humanly possible?" The answer is very simple: Sir, if you are asked to draft an adaption order, you will do it in about half an hour. A lawyer should be careful in his drafting. It may take five minutes. I shall also be able to do it. Give it to any other lawyer Member; he will be able to do it. The question is, are we to adapt section 124A or feel compelled, bound hand and foot, to go back to the old days. The answer is quite clear. The question is how we are to do it. The answer is, go back to the Constitution, do not try to interfere with it. There is no need to interfere with it so far as the Constitution is concerned. In fact, I think it is not necessary to labour this point any further. It comes to this that sedition as an offence has got to be re-oriented by adapting the Penal Code. This aspect of the question did not strike the Department and they did look into clause (2) and adapt the law accordingly. If they had done that that would have robbed section 124A and section 153A of all their obnoxious aspects. The Prime Minister asked if they are expected to know all the laws which are affected. He may not, and the Law Minister may not, but the Law Ministry and the Department under it surely know the laws as they are specialists and they are paid and they should look into all the laws affected. Even in the 1935 Act, there was an adaption order in 1937 and all the provincial and central laws were accordingly adapted. That order was so thorough that ever since there has not been the necessity for any more adaptations. They had taken a few experts from India to England to find out what were to be adapted and how.

Shri Chaliha (Assam): Do you advise us to send someone to London now?

Shri Naziruddin Ahmad: Yes, if they do not have capable heads here, however much regrettable that may be. But I do not think that is necessary, for you have ample men here, the only thing is to get the work done.

So far as these adaptation orders are concerned, we have been having them almost every day. Every time they are reminded of some lacuna or other, and they come out with an adaptation order.

There was the Press Enquiry Committee's Report, but it has been rendered obsolete by the judgment. Instead of grieving over it, the Government should have welcomed it, and adapted these laws accordingly. But they did nothing of the sort and the Supreme Court is alleged to have committed a grave mistake by doing the thing themselves. They have said: "You have enacted article 19(2) and these obsolete laws are no longer valid in the state that they exist today." They pointed out that the laws have not been properly adapted. I submit that these two sections of the Indian Penal Code and the Press laws should now be adapted.

The vague fear has been expressed that if you do not amend the Constitution, litigations will increase. But I say, litigation will certainly increase if you leave the bad laws in doubt. Of course, Dr. Ambedkar has indicated by his departure from the House that he is not very much interested in this matter. But the Press law.....

Mr. Chairman: The hon. Member may now proceed to some other point. He has sufficiently stressed the matter of adaptation.

Shri Naziruddin Ahmad: Then there is the question of restricting rights of speech and expression in the interest of friendly relations with foreign States etc. The hon. Law Minister made it clear that it is not intended to enlarge the scope of the article and wanted to penalise defamation of foreign States and foreign officials. I ventured to suggest at the time—though I was summarily hooted out—that the law of defamation amply protected Indians as well as outsiders. The law of defamation is to be found defined in section 499 of the Indian Penal Code, that is, that whoever harms the reputation of another, that another man may be an Indian or outsider—the Courts of India have jurisdiction to deal it as defamation and punish the defamer. Therefore, so far as friendly relations with foreign States are concerned, I have a fundamental objection to treating it on such a gigantic basis. I think relations between two States should not be affected by what subjects may say individually. In England there are no restrictions on the Press, and the English Press were criticising the Indian Government. It is well known that the Government of India approached the British Government to do something about the matter and we complained that the English Press was defaming us and that would lead to breach of friendship between India and the U. K.; and the reply of the Prime Minister of England was very characteristic. He said: "The Press and the people of England are free and if they do anything wrong, or say anything derogatory to India, it is bad taste but we cannot help it." I think apart from defamation, there is no danger of friendly relations between two States being at all affected by private opinion on either side. Why should friendship with a foreign State be affected by the utterances of any individual. Supposing there is friendship between a man and a woman and somebody says something which may endanger their friendship, will that be a good cause of action? Similarly, if there are two States who are friendly and if anyone criticises one of them, is there any danger of the friendship between the two States being at all affected? The question is whether the Government is responsible for any undesirable criticism. I think there is no danger of breach of friendship between two independent States by mere criticism by any individual citizen of a country.

On the point of contempt of court the English courts have taken a liberal view. They felt that you must allow people to criticise the court. Their criticisms may be unfair, rude or in bad taste but, provided they are respectful to the court, the court should not be too sensitive. One court in a colony had felt itself aggrieved by a remark which amounted to outspoken criticism. Lord Atkin in the Privy Council said that courts of law should be less sensitive and should rather maintain a dignified aloofness to mere criticism, however bad it may be. There is great value in criticism. It may be that criticism sometimes is offensive. But if we suppress criticism the result will be that free expression of opinion upon which democracy rests would be jeopardised and injured.

Mr. Chairman: Is the hon. Member averse to the words "contempt of court" being included in the article?

Shri Naziruddin Ahmad: No.

Mr. Chairman: Then he may proceed to the next point. He has already taken so much of the time and there are other hon. Members desiring to speak.

Shri Naziruddin Ahmad: It is relevant to our attitude towards friendly relations with foreign States. The foreign States should not be very sensitive and should rather tolerate criticism.

Defamation also applies to foreign States. Suppose I abuse or defame a foreign official, foreign Government or the head of a State, say the Prime Minister of England. Then I shall be open to the charge of defamation. When Dr. Ambedkar was discussing this I pointed out at the time that the law of defamation applies to foreigners. He said: No. He said that the Foreign Relations Act of 1932 applies only to Indian States and neighbouring States but does not apply to all foreign States. My suggestion is that you can extend it. What is the Foreign Relations Act after all? Now look at defamation under the Indian Penal Code. The complainant must come to the court and file his complaint. At that time we were considering the Indian princes and the neighbouring States. It would have been very difficult for them to go to court and thus comply with the Criminal Procedure Code that a complainant must come to the court with a complaint. The Foreign Relations Act enabled an official of the Government of India to complain on behalf of any Indian State Prince or any neighbouring State and that shows that the law of defamation applies also to foreigners. They did away with the formality of the State coming

before the court to complain. I suggest that this law has not been explored: it has not been properly utilised. We can now extend its scope that if there is defamation of any foreign State or an official of a foreign State, the result would be that the Government of India may authorise an official to make a complaint and then all the difficulty will be got over. The law of defamation will apply in full force.

It is said that the phrase "friendly relations with foreign States" has been introduced for some ulterior purpose; but if it is true that it is merely to protect foreign States and high officials from defamation, then this provision is not needed. The result of this amendment would be that on the slightest pretext any Government official may prevent any one from making a speech and prosecute him if he makes a speech which he considers likely to endanger friendship with a foreign State. The law of defamation has not been affected by clause (2), rather it has been protected. I submit that foreign relations. in so far as they are affected by defamation of foreign States, are amply protected and there is no need for this provision. The danger is that in the hands of some officials this extended law might be utilised to issue an Ordinance or a law or an order penalising people for criticising—maybe they are honest people.

Though this amendment would make it possible for Government to make a law which relates to the maintenance of friendship with foreign States. I think it is too wide for this House to agree to. The value of personal independence and freedom of speech is too great to be bartered away like this. As one great American statesman has said, it is far better to allow some branches of a tree to grow even though they do not bear fruit, than cut down branches that do bear fruit. These are things which are discussed in the Supreme Court ruling and therefore it is not necessary for me to point them out. I submit that it is far better to allow people to talk than curtail the right of freedom of speech of an honest individual. If anybody goes wrong and defames he may be prosecuted, but that is no reason to arm the executive with powers in the widest possible terms. A request was made by the Prime Minister that we must trust Parliament. My reply is that you must trust the people, trust their sense of independence, trust their sense of fairness, their ability to distinguish good and bad. Let not Government disregard them. On one occasion, the hon. Prime Minister said that all black-marketers should be hanged. Nobody would take it as an incitement to commit a crime of murder, but even though it may have been a casual, rhetorical statement, under the law which you are going to enact it may be construed as an offence. This is the danger which we are committing. Therefore, I submit the people should be trusted. They should be given independence. In our time children were caned to make them conform to rules of discipline. We have been caned but we are not caning our children. The times have changed. It is believed that instead of using the rod you better give them free scope. It may be that they may go wrong in certain cases, but they will have a sense of independence and a sense of propriety and will learn what is good and what is bad, without the use of the rod. Let the people of India be taken just like children; do not use the rod. Though the hon. Prime Minister recognises the futility of using force, I think we are coming to use force even though its futility is quite evident. I submit if people were to be given freedom of speech, the people themselves will set up a high standard, for fear of getting punished if they abuse it. The danger of repressing talks is immense. I, therefore, submit that the best way is to leave the law as it is and not to bother ourselves with them.

Then with regard to public order, the approach should be not to authorise the Government to make any law it likes. Neither the Government nor the Legislatures should be allowed the power of making even ordinary acts as crimes. I submit that it is possible, especially in our country where there is only one party, so to speak, where the opposition means some stray individuals shouting here or there, that there is a tendency for the House to pass any measure brought before it. I do not wish to cast any reflection on the House. The House is dutiful and faithful to the Government and nobody need blame them for passing any law which the Government wants. The other day Dr. Ambedkar described Members as "chorus girls". I think these chorus girls will not make it difficult for Government to pass any law. Therefore, it should not be left to the spur or impulse of the moment, particularly because there is no revising chamber in the shape of an Upper House. Particularly because the election is near, it is desirable to wait. Let an opposition come when there will be real discussion and arguments. Then there will be ample time to make the law. I do not think, therefore, that any law in this direction is needed.

[Shri Naziruddin Ahmad]

I find from certain proceedings of the Security Council at Lake Success that there was actually a proposal to include 'friendly relations with foreign States and public order' as legitimate subjects for curtailing the right of free speech. This was opposed by England, America and others. They said if you want to curtail the right of speech so as to maintain friendly relations then democracy will not function. It is by these laws that some of the countries had been converted into dictatorships. They began with repressive laws. First of all they took good care to suppress expression of opinion. This, I believe, is the first step—although I believe and I hope that this is not intended—but this is the first step in that direction. What will happen in the next election? I believe the Congress will come in a large majority. But yet there will be a minority. Then the Congress Government will be faced by an opposition. I do not think the Utopia which many voters would think and expect would be attained.

Shri Kamath: What is that Utopia?

Shri Naziruddin Ahmad: The Utopia that we will get food, clothing, ample everything. These nobody can give in the present state of things. The whole machinery of the Government has got to be changed before they can do so. So the new Government would not be in a position to do much, and there will be opposition, and there will be reaction. I believe then the reactionary elements will come in at the subsequent election. In trying to arm yourself with reactionary powers, you are really providing a machinery and a handle to the reactionary forces, when they come, to use it to their heart's content against you and me. They will make no discrimination. I think that at the impulse of the moment a weak democracy must not try to strengthen itself by any repressive laws. The effect of it would be just the reverse. People will try to disobey the law and the result will be overthrow of Government. And the reactionary forces will put the clock back and take the country centuries behind.

The hon. the Prime Minister referred to the Weimar Constitution. That was a splendid Constitution. And that has been absolutely scrapped. But I think instead of the example strengthening the argument of Government, it destroys it. How was the Weimar Constitution destroyed? It was by the help of gradual encroachments on the right of free speech and free action. Freedom of speech is such a necessary thing for the successful working of democracy that the forces of reaction begin the moment that freedom is suppressed. Hitler came into power in a large majority. He was then a great patriot—he has ever been a patriot, but at that time he was a very good man. He was non-violent in outlook. But he took it into his head that a legislature was not at all necessary for the expression of public opinion. So he abolished the legislature and then took power to make laws. We are really going to do it. I say it is far better, instead of arming Parliament with the power, it is better that we scrap the Fundamental Rights. Say you do not want them. Let them be scrapped. You ask for powers to enable Parliament to take away liberties. But instead of allowing Parliament to do the thing for you, why not have the power yourself? Scrap the Fundamental Rights. If Fundamental Rights are to be disregarded with impunity, the result would be that there will be no Fundamental Rights, and this would be the first step towards an authoritarian State or a dictatorship. And I see signs of it already.

Government has no great patience with criticism. With more irritation the people would find greater pleasure in irritating them and the result of all this would be a threat to law and order and then the Government will arm itself with more and more powers and so on.

Mr. Chairman: May I interrupt the hon. Member? This morning the hon. Speaker read out the rules in respect of what could be argued at this stage. The hon. Member is making his speech as if he was speaking on the original motion, that is, reference to Select Committee. I would therefore request him to be relevant and take only reasonable time to finish his speech.

Shri Naziruddin Ahmad: The point of view I was placing before the House was that the Bill was unnecessary. I have had no opportunity of placing my amendment, although I had one against reference to the Select Committee.

Mr. Chairman: It is unfortunate that the hon. Member did not get any time then. That does not entitle him to behave as if the rules were changed. They are the same for everybody. I would therefore request him to finish his speech within a reasonable time. Otherwise in this way the speech could be prolonged for days.

Shri Naziruddin Ahmad: The relevancy is that I have two amendments —to refer the matter to the same Select Committee and one for circulation.

Mr. Chairman: I am very sorry that the hon. Member has not advanced any argument at all so far as those two amendments are concerned. He is really concentrating on the merits of this matter and therefore, I think that he will find himself unable to advance any arguments in support of those two amendments. Those amendments really go to the root of the matter. He wants that the Bill may not be considered and that it may be circulated. He has all along been arguing that the Bill is bad on merits and thus considering the Bill.

Shri Naziruddin Ahmad: That is why I say that the Bill has not received proper consideration and the aspects of the argument of the Government have not been made apparent. I have no doubt whatsoever that if proper time is given the hon. Prime Minister himself would change his opinion as he had already changed his opinion in respect of the "reasonable restriction" clause. It was only the work of time. I suggest that these arguments which go to the root of the matter should be pondered over by Government. I should suggest that the only clause which we should pass is the Zamindari abolition clause. The others are not urgent. There is no hurry for others. As regards the Zamindari clause the Government is committed and it is a very urgent matter. Let it be passed and let article 15 be amended. My point is that beyond these the Constitution requires no amendment or at least the amendments ought to be carefully considered.

The points which I am urging have not received sufficient and proper consideration. It may have received an *ex parte* or one sided consideration. Intelligent and educated people like Dr. Jayakar and others have universally condemned this Bill as well as the newspapers who are presumed to reflect public opinion. My point is that though the Bill has many defects and the ordinary law of the country is sufficient, we are going to arm the Government with unnecessary powers and in some cases it would lead to mischief. It is a case for reference to the Select Committee or to public opinion. It is one of the matters where public opinion should assert itself on the minds of the Government and on the Legislature. We cannot pass constitutional amendments of this great magnitude in a hurry and without proper consideration. An hon. Member has suggested that the Prime Minister does not honestly believe in his contentions, but I have no doubt about his sincerity. There is no difficulty about that in my mind. If he gets sufficient time, if he discusses the matters with people thoroughly and not with some of his advisers, he will be unwilling to take such drastic powers. I think he is a thorough democrat. That is the reason why I have been pressing this point. These are the matters which should be considered. We should go to the people, address meetings, write articles and ask people's opinion. After all we are a democratic nation.....

Shri R. K. Chaudhuri (Assam): On a point of order, may I suggest that we adjourn at this stage? The heat has become very oppressive and there is my hon. friend's speech at the back.

Mr. Chairman: The hon. Member can go on but if he has finished his speech, he may resume his seat.

Shri Naziruddin Ahmad: I have made all these arguments for the purpose of a reference to the public opinion. On constitutional questions, the wishes of the country should be taken into account. I took courage in supporting the hon. Home Minister in his Preventive Detention Bill.

Those provisions, powers, were necessary. But, I am averse to changing the Constitution. The powers that we have are enough. It is only a weak Government that will devise to arm itself with unnecessary and repressive powers. Repressive powers never succeed. They have an effect opposite to what is intended. I therefore submit that in my amendment requiring a reference to the Select Committee, I only want time. It is not in a light-hearted spirit or in a mood of mere obstructionism that I have tabled the amendments. These are fundamental matters. We may pass those amendments which are not objected to and which are really acceptable and leave the rest for further consideration. There will be no harm if we adapt the laws and see how things shape themselves under our present laws and then ask the opinion of the people and then change the Constitution. After all a democratic Government acts on behalf of the people and on the authority of the people. The elections are coming. There is nothing urgent in regard to these Fundamental Rights. Therefore, we should wait.

[Shri Naziruddin Ahmad]

The hon. Prime Minister says that the Constitution must grow. Everybody will agree with the fundamental truth of this remark that the Constitution must grow. But, to grow in what direction? In the way of enlarging Fundamental Rights or curtailing them? Is it growth or is it stunting growth?. I, therefore, submit that all these arguments have this relevancy. This House has gone too far to the other side and many speeches here are only fulsome adulation of the Ministers. A matter like this should not be discussed, and voted upon on a party basis. No less than 77 Members of the House were of the opinion that they should be given freedom to vote.

An Hon. Member: None now.

Shri Naziruddin Ahmad: That is another matter. At that time there were 77 Members.....

Mr. Chairman: Let the hon. Member concentrate his attention on the two amendments. He is digressing.

Shri Naziruddin Ahmad: What I submit is, protests were made by the people and the Government responded. If a change is accepted by the Government, it is only because there are protests. So, time should be given to the country to make further protests and then the Government will be in a position to study the matter. I do not think Government is well advised in rushing this Bill. As I submitted, on a matter of constitutional importance of this magnitude, we should proceed with caution. We must not hurry headlong with repressive measures. This Bill, I think, is repressive. I submit that Government is on the brink of a precipice. Already there are signs of disorders with which we are very much concerned and which we want to suppress. If we repress public opinion, then illegitimate public opinion will have a cankerous growth and will create a great deal of mischief by preaching things which are prejudicial to peace. They will say: "What have we got by Independence; are the people of India free; or are the Government free?" I believe the prevailing opinion is that the Government and the Ministers are free to do what they like. Are the people free to talk? Their mouths are going to be gagged. This is a very serious matter. The hon. Home Minister who represents the Government for the time being is a great constitutional lawyer himself.

Mr. Chairman: I am sorry, I have to remind the hon. Member that he is repeating himself *ad nauseum*. The same arguments are being repeated. I will therefore request the hon. Member to bring his remarks to a close. The hon. Member has dealt with this point fully and I do not think he need dwell on it any more.

Shri Naziruddin Ahmad: But consider the reluctance of the House to listen to arguments; the length of the speeches should also be graduated accordingly.

Mr. Chairman: The House should not be treated in this light manner. There is little time left and the time of the House is precious. There are other hon. Members anxious to offer their remarks and so I would request the hon. Member to bring his remarks to a close.

Shri Naziruddin Ahmad: Therefore, I say that there is a case for reference to the people and.....

Mr. Chairman: The hon. Member has already reiterated this point, and also the cast-iron theory.

Shri Naziruddin Ahmad: The House seems to be in a light-hearted mood. I am not in a light-hearted spirit.

Shri D. D. Pant (Uttar Pradesh): No, it has a heavy heart.

Shri Naziruddin Ahmad: Myself? No.

Now, as regards the decision of the Supreme Court and the.....

Mr. Chairman: I am sorry to interrupt the hon. Member. But he has already referred to the judgment of the Supreme Court and the remarks of the hon. Law Minister at great length. I do not think he need refer to them again.

Shri Naziruddin Ahmad: No, Sir. I am dealing with an entirely different matter. The hon. Law Minister said that the courts were wrong and for a different reason altogether they had...

Shri Bharati (Madras): No, he did not say wrong, but that it was unsatisfactory.

Shri Naziruddin Ahmad: Yes, he said that.....

Mr. Chairman: As I pointed out, this matter has already been dealt with by the hon. Member. I do not know why he is so desirous of repeating himself. I have to request him to bring his remarks to a close.

Shri Naziruddin Ahmad: I am not repeating, Sir. The hon. Minister said that Government has certain

police powers, which probably mean powers which cannot be expressed in the statute. And he said that there is the American way of interpreting the Constitution.

Mr. Chairman: What has that to do with his amendment for circulation of the Bill?

Shri Naziruddin Ahmad: The relevancy is here, Sir. The entire basis of the Government's case is this. They ask: "What are we to do with the Fundamental Rights? We cannot sit idle. We must do something." I feel that the interpretation of the courts was right. There was in the Drafting Committee some discussion and the words "due process of law" were introduced and Dr. Ambedkar in his.....

Shri Bharati: How is that relevant to his amendment?

Shri Naziruddin Ahmad: It is relevant in this way. The due process of law.....

Mr. Chairman: This point of "due process of law" has already been commented upon and it is not necessary for the hon. Member to advance the same arguments.

Shri Naziruddin Ahmad: I am giving a different argument, though I refer to the same case, I am arguing in compartments. In article 22, dealing with the Fundamental Rights article, the Drafting Committee introduced the words "due process of law". That expression, due process of law, appears in the American Constitution and it was held by the Supreme Court of U. S. A. that Government had police powers. But this argument was rejected by our own Attorney-General as we had no "due process of law" in our Constitution. Again at the consideration stage of our Draft Constitution in the Constituent Assembly the "due process of law" clause was deliberately rejected by us and the English phrase "procedure established by law" was introduced.

Mr. Chairman: We are now considering article 19 and not 22 where due process of law comes in.

Shri Naziruddin Ahmad: It was in connection with article 22 that the question arose. In fact that arose in Gopalan's case, not in Chiranjit Lal's case as Dr. Ambedkar said and the point arose like this. The accused wanted the Court to assume powers outside the Constitution. Our Attorney-General refuted this argument and said that the American formula was not used. The English formula of "procedure established by law" was introduced and that was fatal to Dr. Ambedkar's contention. The construction of the Constitution by the Supreme Court was after full consideration by each of the Judges—five of them were unanimous.....

Shri B. K. P. Sinha (Bihar): May I point out that my hon. friend is distorting the arguments of the Law Minister. The point at issue is not construction of the article by the Supreme Court—whether it was right or wrong. The Law Minister's contention was that in view of those decisions we are faced with a particular situation. How to meet that situation?

Shri Naziruddin Ahmad: My hon. friend is arguing. I do not agree.

Mr. Chairman: The argument of the hon. Member who has intervened is correct. So far as the question of Gopalan's case is concerned, it dealt with a different set of circumstances. Here we are dealing with the Select Committee Report and we are to confine our remarks to what happened in the Select Committee. I would therefore request the hon. Member to be quite relevant. He is traversing a ground which could only have been traversed before reference to the Select Committee.

Shri Hussain Imam (Bihar): On a point of order. The book that has been circulated refers to Gopalan's case. Article 19 also.

Mr. Chairman: This is not a point of order at all. What has that to do with the present discussion?

The Minister of Home Affairs (Shri Rajagopalachari): In view of the fact that the hon. Member is likely to conclude at one o'clock, we might let him go on.

Shri Naziruddin Ahmad: This is the spirit which runs behind the Bill. Should there be any gagging of Members on a Bill of this magnitude? I ask the hon. Home Minister who is a liberal politician, an able lawyer and an elderly statesman; should he not tolerate a little argument which may be unpleasant?

Shri Rajagopalachari: Take my tip now. The conduct of the hon. Home Minister is likely to incline Members to curtail freedom of speech.

Mr. Chairman: It is nearly one o'clock. May I enquire from the hon. Member whether he is proposing to conclude his speech?

Hon. Members: Must conclude.

Shri Naziruddin Ahmad: I would require about half-an-hour more.

Mr. Chairman: I would like to take the sense of the House. Does the House propose to sit for half-an-hour?

Hon. Members: No, Sir.

Mr. Chairman: I hope the hon. Member will conclude his speech in a shorter time—say within ten or five minutes.

Shri Naziruddin Ahmad: I cannot finish in five minutes.

Mr. Chairman: Let him finish in ten minutes.

Shri Naziruddin Ahmad: I know the House has repeated Dr. Ambedkar's dictum. I have a duty to argue this matter fully. I cannot be treated as a chorus girl.

Shri T. N. Singh (Uttar Pradesh): Sir, the hon. Member has made a remark which is very derogatory. He has stated that this House consists of chorus girls. (*Interruptions*).

Shri Naziruddin Ahmad: I utterly repudiate the suggestion. It is not my expression. The protest should be addressed to different quarters and not to me. I have been only a mouthpiece of Dr. Ambedkar. I protest against myself being treated as a chorus girl. I cannot sing the praise of the Government. I have supported the Government on unpopular causes but this is an occasion when I cannot support the Government. I do not like to be gagged in my speech. Because of repeated interruptions I have to pick up my thoughts and place them for permanent record.....

Mr. Chairman: I gave ten minutes to the hon. Member to conclude his speech. If he is not ready to continue his speech it is a different matter but it is a bad precedent to allow him, as he wants, time to pick up his thoughts and resume his speech again tomorrow. I would request him to finish his speech in ten minutes.

Shri Naziruddin Ahmad: The point is that I do not wish to cover the ground already covered. I have to pick up some of the points, because my thoughts have been diverted by incessant interruptions. After all I am a small humble individual, a poor lawyer earning his bread and it is only out of accident that I have come here. I am not a professional politician at all. I submit that all these interruptions have to a certain extent disturbed my thoughts. If I am forced to go on today there will be repetition but tomorrow if I am given some time.....

Mr. Chairman: Order, order. I asked the hon. Member to finish his speech in ten minutes. He is unable to do so, as his thoughts are not collected and he is using the time to pass remarks against other people. Under the circumstances I see no alterative but to treat the speech of the hon. Member as closed.

The House will now stand adjourned till 8-30 A.M. tomorrow.

The House then adjourned till Half Past Eight of the Clock on Wednesday, the 30th May, 1951.